

THE CITY OF VERO BEACH ELECTRIC UTILITY

ASSET PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

**CITY OF VERO BEACH, FLORIDA,
AS SELLER**

AND

**FLORIDA POWER & LIGHT COMPANY,
AS BUYER**

DATED AS OF [_____], 2013

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.1 Definitions.....	1
Section 1.2 Certain Interpretive Matters.....	24
ARTICLE II PURCHASE AND SALE	26
Section 2.1 Acquired Assets.....	26
Section 2.2 Excluded Assets.....	28
Section 2.3 Assumed Liabilities.....	29
Section 2.4 Excluded Liabilities.....	29
Section 2.5 Capital Leases.....	30
Section 2.6 Airport Warehouse Lease Agreement Option.....	31
ARTICLE III THE CLOSING.....	31
Section 3.1 Closing.....	31
Section 3.2 Purchase Price.....	31
Section 3.3 Adjustment to Purchase Price.....	32
Section 3.4 Payment of Purchase Price.....	33
Section 3.5 Allocation of Purchase Price.....	33
Section 3.6 Prorations.....	34
Section 3.7 Deliveries by Seller.....	35
Section 3.8 Deliveries by Buyer.....	37
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER.....	38
Section 4.1 Organization.....	38
Section 4.2 Authority Relative to this Agreement.....	38
Section 4.3 Consents and Approvals; No Violation	38
Section 4.4 Reports	39
Section 4.5 Undisclosed Liabilities.....	39
Section 4.6 Absence of Material Adverse Effect.....	39
Section 4.7 Real Property, Title and Related Matters.....	39
Section 4.8 Operability; Condition of the Vero Beach Electric Utility; Sufficiency of Real Property Interests.....	43
Section 4.9 Insurance.....	44
Section 4.10 Environmental, Licensing and Governmental Approval Matters.....	44
Section 4.11 Labor Matters.....	47
Section 4.12 ERISA; Benefit Plans	48
Section 4.13 Location of Acquired Assets.....	48
Section 4.14 Contracts	48
Section 4.15 Legal Proceedings, etc.	50
Section 4.16 Non-Environmental Permits; Compliance with Law.....	50
Section 4.17 Regulation as a Utility.....	51
Section 4.18 Tax Matters.....	51
Section 4.19 Intellectual Property.....	51

Section 4.20 [Reserved]	52
Section 4.21 Service Territory	52
ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER	52
Section 5.1 Organization; Qualification	52
Section 5.2 Authority Relative to This Agreement.....	52
Section 5.3 Consents and Approvals; No Violation.....	52
Section 5.4 Availability of Funds.	53
Section 5.5 Legal Proceedings.....	53
Section 5.6 Certain Agreements.	53
ARTICLE VI COVENANTS OF THE PARTIES	54
Section 6.1 Conduct of Business Relating to the Acquired Assets.....	54
Section 6.2 Access to Information; Reporting.....	56
Section 6.3 Expenses.	56
Section 6.4 Further Assurances; Cooperation.....	57
Section 6.5 Public Statements.....	58
Section 6.6 Consents; Approvals.	59
Section 6.7 Brokerage Fees and Commissions.	61
Section 6.8 Tax Matters.	61
Section 6.9 Updating Disclosure Schedules.	62
Section 6.10 Employees.....	63
Section 6.11 Risk of Loss; Insurance.....	65
Section 6.12 Assumed Contracts; Ancillary Agreements.....	66
Section 6.13 OUC Agreements and FMPA Entitlements.....	66
Section 6.14 Separation of Seller Assets.	67
Section 6.15 Franchise Ordinance.	67
Section 6.16 Capital Expenditure and Maintenance Plan; Spare Parts.....	67
Section 6.17 Customer Data Conversion.	68
Section 6.18 Seller as Customer.	68
Section 6.19 Vero Beach Electric Utility Bonds and Other Indebtedness.....	69
Section 6.20 [Reserved]	69
Section 6.21 Exclusivity.	69
Section 6.22 No Seller Changes in Law.	69
Section 6.23 Vero Beach Power Plant; Certain Environmental Liabilities.....	70
Section 6.24 Customer Consumption Allocation.....	70
Section 6.25 Seller's Responsibility for Environmental Liabilities.....	72
ARTICLE VII CONDITIONS PRECEDENT.....	72
Section 7.1 Conditions Precedent to Obligations of Buyer.	72
Section 7.2 Conditions Precedent to Obligations of Seller.....	74
ARTICLE VIII INDEMNIFICATION AND PAYMENT FOR LOSSES.....	76
Section 8.1 Indemnification and Payment for Losses.....	76
Section 8.2 Defense of Claims.....	78
Section 8.3 Offset.....	80

ARTICLE IX TERMINATION.....	81
Section 9.1 Termination.....	81
Section 9.2 Effect of Termination.....	83
ARTICLE X MISCELLANEOUS PROVISIONS.....	84
Section 10.1 Amendment and Modification.....	84
Section 10.2 Waiver of Compliance; Consents.....	85
Section 10.3 Third Party Beneficiaries.....	85
Section 10.4 Notices.....	85
Section 10.5 Assignment.....	86
Section 10.6 Governing Law.....	86
Section 10.7 Counterparts.....	87
Section 10.8 Schedules and Exhibits.....	87
Section 10.9 Entire Agreement.....	87
Section 10.10 No Joint Venture.....	87
Section 10.11 Change in Law.....	87
Section 10.12 Specific Performance.....	88
Section 10.13 Severability.....	88

LIST OF EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A-1	Form of Assignment and Assumption Agreement
Exhibit A-2	Form of Assignment of Easements and Other Real Property Interests
Exhibit B	Form of Bill of Sale
Exhibit C	Form of Special Warranty Deed
Exhibit D	Form of Seller's Affidavit
Exhibit E	Form of Franchise Ordinance
Exhibit F	Form of Termination of Territorial Boundary Agreement
Exhibit G	Form of Vero Beach Power Plant Site Lease Agreement and Memorandum of Lease
Exhibit H	Reserved
Exhibit I-1	Form of Airport Substations 5 and 6 Lease Agreement and Memorandum of Lease
Exhibit I-2	Form of Airport Warehouse Lease Agreement and Memorandum of Lease
Exhibit J	Current Form of Streetlight Agreement
Exhibit K	Form of Pole Attachment for Seller Fiber Optic System
Exhibit L-1	Form of Dark Fiber License Agreement
Exhibit L-2	Form of Substation Access Agreement
Exhibit M	Reserved
Exhibit N	Reserved
Exhibit O	Form of Capital Leases
Exhibit P	Form of District License
Exhibit Q	Form of District Sublicense
Exhibit R	Substation 20 Transmission Line Easements or Rights of Ways
Exhibit S	Vero Beach Power Plant Site Property Description
Exhibit T	Grand Harbor Property Description
Exhibit U	Acquired Substations and Certain Other FPUA Joint Facilities
	Related Property Descriptions
Exhibit V	New Substation Property Description
Exhibit W	Form of Estoppel Certificates
Exhibit X	Form of Referendum Question

SCHEDULES

Schedule 1.1(16)	Assumed Contracts
Schedule 1.1(36)	Capital Expenditure and Maintenance Plan
Schedule 1.1(55)	Specific Customer Service Assets
Schedule 1.1(57)	Decommissioning Standards
Schedule 1.1(67)	Specific Distribution Assets
Schedule 1.1(72)	Easements
Schedule 1.1(89)	Excluded Inventory
Schedule 1.1(91)	Excluded Licenses
Schedule 1.1(93)	Excluded Substations
Schedule 1.1(99)	Fiber Optic System
Schedule 1.1(128)	Licensed Intellectual Property
Schedule 1.1(148)	Owned Intellectual Property
Schedule 1.1(153)	Specific Permitted Encumbrances
Schedule 1.1(167)	Radio Licenses
Schedule 1.1(179)	Retained Employees
Schedule 1.1(194)	Service Territory
Schedule 1.1(195)	Spare Parts
Schedule 1.1(198)	Certain Streetlight Assets
Schedule 1.1(199)	Streetlight Maintenance Inventory
Schedule 1.1(212)	Specific Transmission Assets
Schedule 1.1(215)	Vehicles
Schedule 4.3	Seller Third-Party Consents
Schedule 4.5	Certain Disclosed Liabilities to which Acquired Assets are Subject
Schedule 4.6	Disclosed Material Adverse Effects
Schedule 4.7(b)	Real Property Encumbrances Requiring a Release or Subordination
Schedule 4.7(p)(i)	Eminent Domain or Rezoning Actions
Schedule 4.7(p)(ii)	Public Improvements or Special Assessments
Schedule 4.7(p)(iii)	Plan or Study to Modify Streets or Roads
Schedule 4.7(p)(vii)	Mining, Mineral or Water Extraction or Development Projects; Soil or Land Defects
Schedule 4.7(q)	Rents, Fees, Royalties, Water Or Sewer Charges, Taxes or Assessments or Other Amounts Payable or Receivable
Schedule 4.7(t)	Certain Encumbrances, Covenants, Conditions, Reservations, Restrictions or Easements
Schedule 4.7(u)	Material Adverse Effects on Real Property
Schedule 4.7(v)	Mortgages, Deeds of Trust and Other Agreements Creating Security Interests on Real Property
Schedule 4.8	Acquired Assets Not in Sufficient Condition
Schedule 4.9	Insurance
Schedule 4.10	Environmental, Licensing and Governmental Matters
Schedule 4.10(j)	Environmental Permits

Schedule 4.11	Labor Matters
Schedule 4.12(a)	Benefit Plans
Schedule 4.13	Acquired Assets not Located on Real Property
Schedule 4.14	Material Seller Contracts
Schedule 4.15	Seller Legal Proceedings
Schedule 4.16(b)	Non-Environmental Permits
Schedule 4.18	Tax Matters
Schedule 4.19	Intellectual Property
Schedule 4.20	Incomplete Copies
Schedule 5.3(a)	Buyer Third-Party Consents
Schedule 5.3(b)	Buyer's Required Regulatory Approvals
Schedule 5.5	Buyer Legal Proceedings
Schedule 6.1(a)	Interim Period Exceptions
Schedule 6.6(b)	Filings
Schedule 6.10(a)	Seller Employees
Schedule 6.17	Data Conversion Requirements
Schedule 9.1(i)	Hypothetical Casualty Event Scenarios

ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT (the “*Agreement*”), dated as of [] 2013 (“*Effective Date*”), is made and entered into by and between the CITY OF VERO BEACH, FLORIDA, a municipal corporation organized under the laws of the State of Florida (“*Seller*”), and FLORIDA POWER & LIGHT COMPANY, a corporation organized under the laws of the State of Florida (“*Buyer*”). Seller and Buyer are referred to individually as a “*Party*,” and collectively as the “*Parties*.[”]

WITNESSETH:

WHEREAS, Seller owns and operates an electric utility in Indian River County, Florida, and wishes to exit the electric utility business;

WHEREAS, Buyer desires to purchase and assume, and Seller desires to sell and assign, certain electric utility assets and certain associated liabilities, upon the terms and conditions hereinafter set forth in this Agreement (the “*Transaction*”) as part of Seller’s exit strategy from the electric utility business;

WHEREAS, Buyer and Seller desire for Buyer to provide retail electric service to Seller’s electric utility customers, commencing on the day that Buyer purchases from Seller such electric utility assets upon the terms and conditions hereinafter set forth in this Agreement;

WHEREAS, Seller agrees to lease to Buyer and Buyer agrees to lease from Seller the site of Seller’s electric utility plant to allow Buyer to temporarily operate Seller’s electric utility plant for a period of time before such electric utility plant is decommissioned and dismantled as hereinafter provided, and Buyer will then provide electric power to Seller’s service area entirely through Buyer’s own, broader electric utility system; and

WHEREAS, Buyer and Seller desire for the rates for retail electric service to be provided to Seller’s electric utility customers to be the same as the rates for retail electric service charged by Buyer to its retail electric service customers;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions.

As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

- (1) “*Acquired Assets*” has the meaning set forth in Section 2.1.

(2) “*Acquired Land In Fee*” means the real property occupied by substations 3, 7, 8, 9, 10, 11, and 20 described in Exhibit U, any other real property occupied by any of the FPUA Joint Facilities (other than substation 20) that is described in Exhibit U, and the real property for a new substation described in Exhibit V.

(3) “*Action*” means any suit, claim, proceeding, litigation, arbitration, audit or investigation by or before any Governmental Authority or arbitral tribunal.

(4) “*Affiliate*” means, with respect to any Person, (i) each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person; (ii) any Person that beneficially owns or holds fifty percent (50%) or more of any class of voting securities of such designated Person or fifty percent (50%) or more of the equity interest in such designated Person; or (iii) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest. For the purposes of this definition, “*control*” (including, with correlative meanings, the terms “*controlled by*” and “*under common control with*”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(5) “*After-Tax Basis*” means (a) for purposes of any provision of this Agreement that requires a payment to be made on an After-Tax Basis, such payment shall be made in an amount equal to the sum of (i) the payment to be made before adding the amounts referred to in clause (ii) of this sentence (the “*Base Payment*”) and (ii) an amount equal to the sum of any and all Taxes paid or required to be paid by or on behalf of the payee as a result of receipt or recognition of such Base Payment (including, without limitation, any Taxes on such additional amounts) (the “*Additional Payment*”); provided, however, that no Additional Payment shall be payable if (A) the Base Payment is not includable in the payee’s gross income, (B) the Base Payment is being made to compensate the recipient for a loss or expense that is deductible for federal Tax purposes or (C) the Base Payment compensates the payee for failure to receive an amount, other than a base payment, that would have been includable in the recipient’s gross income, had such amount been received, so that the net amount actually received and retained by the payee after payment of all Taxes on the Base Payment and the Additional Payment is equal to the payment otherwise required to be made to the payee under any provision of this Agreement; and (b) for purposes of determining the After-Tax Basis, each payee shall be deemed to be subject to tax at the highest marginal (federal, state and local, as the case may be) Tax rate applicable to a Person with the same legal status as payee doing business in Florida in effect or scheduled to be in effect for the year in which receipt of the payment or payments is taxed.

(6) “*Agreement*” means this Asset Purchase and Sale Agreement together with the Schedules and Exhibits hereto, as the same may be amended from time to time in accordance herewith.

(7) “*Airport Property Lease Agreements*” means the Airport Substations 5 and 6 Lease Agreement and, if Buyer exercises the Airport Warehouse Lease Agreement Option, the Airport Warehouse Lease Agreement.

(8) “*Airport Substations 5 and 6 Lease Agreement*” means a lease agreement and memorandum of lease substantially in the form of Exhibit I-1 attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(f) and approved by the FAA if required by applicable Law or by the provisions of any applicable contract with or grant from the FAA, including rent in the amount of \$47,658.81 per year, payable in monthly installments.

(9) “*Airport Warehouse Lease Agreement*” means a lease agreement and memorandum of lease substantially in the form of Exhibit I-2 attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(g) and approved by the FAA if required by applicable Law or by the provisions of any applicable contract with or grant from the FAA, including rent as set forth in Section 2.6.

(10) “*Airport Warehouse Lease Agreement Option*” has the meaning set forth in Section 2.6.

(11) “*Allocation*” has the meaning set forth in Section 3.5(b).

(12) “*All-Requirements Contract*” means that certain All-Requirements Power Supply Project Contract dated October 1, 1996, between FMPA and Seller, as amended.

(13) “*Ancillary Agreements*” means the Bill of Sale, Assignment and Assumption Agreement, the Assignment of Easements and Other Real Property Interests, the Vero Beach Power Plant Site Lease Agreement, the Airport Property Lease Agreements, the Capital Leases (if any), the District Sublicenses, the Pole Attachment Agreement for Seller Fiber Optic System, the Dark Fiber License Agreement, the Substation Access Agreement, the Streetlight Agreement, the Termination of Territorial Boundary Agreement, the Franchise Ordinance, and any other Contract entered into by Seller and Buyer relating to the transactions contemplated herein or at or for the Closing, as the same may be amended from time to time in accordance therewith.

(14) “*Assignment and Assumption Agreement*” means the Assignment and Assumption Agreement between Seller and Buyer substantially in the form of Exhibit A1 attached hereto.

(15) “*Assignment of Easements and Other Real Property Interests*” means the assignment of Easements and Other Real Property Interests, including the Substation 20 Transmission R/W, between Seller and Buyer substantially in the form of Exhibit A-2 attached hereto.

(16) “*Assumed Contracts*” mean the Contracts listed in Schedule 1.1(16) or any other Seller Contract, in each case as has been requested by Buyer to be assumed by Buyer at Closing by notice to Seller given not later than ninety (90) days prior to Closing.

(17) “*Assumed Liabilities*” has the meaning set forth in Section 2.3.

(18) “*Assumed Pension Liability*” has the meaning set forth in Section 6.10(f).

(19) "***Attachment Agreements***" means all pole attachment agreements, wireline agreements, streetlight attachment agreements, joint use agreements, CATV (cable) agreements, fiber optic agreements, franchise agreements for the placement of telecommunication facilities, fiber-optic cable or cable facilities on any of the Acquired Assets, agreements for the placement of telecommunication, cable or other ground equipment and monopolies on any of the Acquired Assets, agreements for the attachment of facilities (including by Governmental Authorities) to towers, substations, buildings, transmission or distribution poles or other facilities comprising the Acquired Assets, banner agreements, holiday lights agreements and other similar agreements.

(20) "***Available Proceeds***" means the sum of (i) the total aggregate amount of insurance coverage under all of Seller's policies of insurance that are applicable to the Acquired Assets that were damaged or destroyed by the relevant fire or other casualty, plus (ii) the amount (or value, if provided in the form of property or repair assistance) of assistance that Seller has been provided (or that has been committed to be provided to Seller) in any form (including cash grant, property or repair assistance) by any Person (including the Federal Emergency Management Agency of the United States or any other Governmental Authority) that may be used by Seller to cure such damage or destruction.

(21) "***Benefit Plans***" means each employee benefit plan as defined in Section 3(3) of ERISA, each governmental plan as defined in Section 3(32) of ERISA, and each other plan, contract, agreement, arrangement or policy, whether written or oral, qualified or non-qualified, providing for (i) compensation, severance benefits, bonuses, profit-sharing or other forms of incentive compensation; (ii) vacation, holiday, sickness or other time-off; (iii) health, medical, dental, disability, life, accidental death and dismemberment, employee assistance, educational assistance, relocation or fringe benefits or perquisites, including post-employment benefits; and (iv) deferred compensation, defined benefit or defined contribution, retirement or pension benefits.

(22) "***Between Meter Readings Period***" has the meaning set forth in Section 6.24.

(23) "***Bill of Sale***" means the Bill of Sale, substantially in the form of Exhibit B attached hereto.

(24) "***Bond Resolution***" means the City of Vero Beach Electric Revenue Bond Resolution No. 93-17 adopted on May 18, 1993, as amended.

(25) "***Breach***" means (a) any breach or violation of, or any inaccuracy in, any representation or warranty, (b) any breach of, or failure to perform or comply with, any condition, provision, covenant or obligation, or (c) any other violation, breach or event of default.

(26) "***Business Books and Records***" has the meaning set forth in Section 2.1(h).

(27) “*Business Day*” shall mean any day other than Saturday, Sunday and any day on which banking institutions in the State of Florida are authorized by law or other governmental action to close.

(28) “*Business of the Vero Beach Electric Utility*” means each of the following: (a) the ownership, operation and maintenance of the Vero Beach Electric Utility; (b) the sale and provision of electricity to the Customers; and (c) the ownership, operation and maintenance of the Streetlight Assets.

(29) “*Buyer*” has the meaning set forth in the preamble to this Agreement.

(30) “*Buyer Benefit Plans*” has the meaning set forth in Section 6.10(d).

(31) “*Buyer Fundamental Representations*” means the representations and warranties made in Sections 5.1, 5.2, 5.3(a)(i) and 6.7.

(32) “*Buyer Indemnitee*” has the meaning set forth in Section 8.1(b).

(33) “*Buyer Remediation Responsibility*” has the meaning set forth in Section 6.23.

(34) “*Buyer Remediation Share*” has the meaning set forth in Section 6.23.

(35) “*Buyer’s Required Regulatory Approvals*” has the meaning set forth in Section 5.3(b).

(36) “*Capital Expenditure and Maintenance Plan*” means the document attached hereto as Schedule 1.1(36), which details the maintenance and capital expenditure schedule for the Acquired Assets through December 31, 2016.

(37) “*Capital Improvement Notice*” has the meaning set forth in Section 6.16(a).

(38) “*Capital Lease Assets*” has the meaning set forth in Section 2.5.

(39) “*Capital Leases*” means any one or more leases entered into between Seller, as lessor, and Buyer, as lessee, substantially in the form of Exhibit O attached hereto, pursuant to the exercise of the option by the Buyer pursuant to Section 2.5 to lease any part or parts of the Acquired Assets for a minimum term of ninety-nine (99) years rather than acquire title thereto.

(40) “*Cayenta*” means Cayenta, a division of N. Harris Computer Corporation, or successor thereto.

(41) “*Closing*” has the meaning set forth in Section 3.1.

(42) “*Closing Date*” has the meaning set forth in Section 3.1.

(43) “*Closing Election*” means an Immediate Closing Election, a Delayed Closing Election or a Partial Recovery Closing Election.

(44) “*COBRA*” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the rules and regulations promulgated thereunder and any similar state or local Laws.

(45) “*Code*” means the Internal Revenue Code of 1986, as amended.

(46) “*Commercially Reasonable Efforts*” mean efforts which are designed to enable a Party, directly or indirectly, to expeditiously satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume Liabilities other than expenditures and Liabilities which are customary and reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

(47) “*Contract*” means any agreement, contract, purchase order, lease, license, right, commitment, evidence of Indebtedness, binding bid or other legally binding arrangement.

(48) “*Converted Represented Transferred Employees*” means Transferred Employees who were covered by any Seller Collective Bargaining Agreement while employed with the Seller, but who will be employed by the Buyer in positions that are not subject to a collective bargaining agreement.

(49) “*Converted Unrepresented Transferred Employees*” means Transferred Employees who were not covered by any Seller Collective Bargaining Agreement while employed with the Seller, but who will be employed by the Buyer in positions that are subject to a collective bargaining agreement.

(50) “*Council*” means the City Council of the Seller.

(51) “*Covered Loss*” has the meaning set forth in Section 8.1(a).

(52) “*Cure Amount*” means the amount of costs that Seller will be required to pay in order prior to Closing to cure the damage to or destruction of the Acquired Assets resulting from any fire or other casualty as required by Section 6.11(c).

(53) “*Customer*” means any existing or possible, retail electric service customer of Seller within the Service Territory.

(54) “*Customer Deposits*” means the electric utility deposits collected by Seller from its electric utility customers or the portion of deposits collected from customers of electric, water and sewer utility services allocable to the electric service provided by the Seller.

(55) “*Customer Service Assets*” means the customer service facilities, equipment and other tangible property and assets relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility or located on the Real Property, including but not limited to the facilities, equipment and other tangible property and

assets that connect the Distribution Assets to each individual Customer's Delivery Point (and other property and assets associated with or ancillary thereto), Customer/premise/account data, historical consumption information, meters, remote metering equipment, and equipment needed to access the meters (e.g., keys to locked meter rooms, any meter/special/barrel lock/anchor keys), and without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1(55) but excluding City Hall and related office equipment. For the avoidance of doubt, Customer Service Assets do not include assets used by Seller solely for its water and sewer utility business.

(56) "***Dark Fiber License Agreement***" means an agreement substantially in the form of Exhibit L-1 attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(e) and approved by Indian River County and the School District of Indian River County.

(57) "***Decommissioning***" means the decommissioning of the Vero Beach Power Plant, the Vero Beach Power Plant Substation and related facilities on the Vero Beach Power Plant Site in accordance with the standards set forth on Schedule 1.1(57).

(58) "***Deed***" means a special warranty deed substantially in the form of Exhibit C attached hereto.

(59) "***Default Rate***" means the rate determined from time to time equal to Buyer's then-current FPSC-approved pretax cost of capital from investor sources applied on a pro-rated annual basis, which is the sum of: (a) the quotient of (i) the product of (A) Buyer's common equity ratio multiplied by (B) its allowed return on common equity, divided by (ii) one minus the Buyer's effective income tax rate; plus (b) the product of the Buyer's debt ratio (calculated as one minus its equity ratio) and the projected cost of long-term debt for a regulated electric utility with a similar Moody's credit rating to that of the Buyer. The Buyer's equity ratio, allowed return on common equity, and effective income tax rate are referenced in the most recent FPSC-issued rate order to the Buyer, as amended from time to time. The Default Rate is 12.06% on January 4, 2013, based upon the variable elements of the calculation that existed on that date and consistent with the rate settlement recently approved by the FPSC, which will be memorialized in an order.

(60) "***Defeasance Obligations***" means (i) direct obligations of the United States of America, (ii) obligations the timely payment of the principal of and interest on which when due are fully and unconditionally guaranteed by the United States of America, or (iii) obligations which, in the opinion of the Attorney General of the United States of America, are general obligations backed by the full faith and credit of the United States of America.

(61) "***Delayed Closing Election***" has the meaning set forth in Section 9.1(i).

(62) "***Delivery Point***" means the point on the Customer's premises where, (i) if delivery is being made through overhead wires, Seller's wires connect to Customer's wires at the Customer's weatherhead, and (ii) if delivery is being made through underground wires, Seller's wires connect to the Customer's meter can.

(63) “*Department of Energy*” means the United States Department of Energy and any successor agency thereto.

(64) “*Department of Justice*” means the United States Department of Justice and any successor agency thereto.

(65) “*Department of Labor*” means the United States Department of Labor and any successor agency thereto.

(66) “*Direct Claim*” has the meaning set forth in Section 8.2(c).

(67) “*Dismantled Portion*” has the meaning set forth in Section 6.23.

(68) “*Distribution Assets*” means the electric distribution facilities, equipment and other tangible property and assets relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility or located on the Real Property or the Vero Beach Power Plant Site, including but not limited to the facilities, equipment and other tangible property and assets that connect the Transmission Assets to the Customer Service Assets (and other property and assets associated with or ancillary thereto), distribution substation equipment, feeder circuits and associated hardware (switches and switch gear, regulators, capacitor banks, reclosers, protective equipment, etc), primary circuits, transformers, secondaries and services, and associated physical assets (including poles, conductors, cables, insulators, metering, street lights and outdoor lights), and , without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1(67).

(69) “*District*” means the Indian River Farms Water Control District.

(70) “*District Licenses*” means one or more agreements between the District and Seller substantially in the form of Exhibit P attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(d) and approved by the District, that relate to all of the Real Property owned by the District on which any of the Acquired Assets are located as of the Closing Date.

(71) “*District Sublicenses*” means one or more agreements between the Buyer and the Seller substantially in the form of Exhibit Q attached hereto, or such form as may be otherwise agreed by the Parties pursuant to Section 6.4(d) and approved by the District, that provide for sublicenses with respect to each of the District Licenses entered into on the Closing Date.

(72) “*Easements*” means the electrical distribution easements, electrical transmission easements, access easements, aerial easements and other easements used in or necessary for (A) the Business of the Vero Beach Electric Utility or (B) the operation or maintenance of the Acquired Assets, including the easements identified in Schedule 1.1(72).

(73) “*Effective Date*” has the meaning set forth in the preamble to this Agreement.

(74) "***Electric Utility Accounting Records***" means all financial statements, accounting books, related records and reports of Seller relating to the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility.

(75) "***Encumbrances***" means any liens, charges, pledges, options, mortgages, deeds of trust, security interests, equitable interests, claims, easements, rights-of-way, leases, mineral reservations, covenants, conditional and installment sales contracts, title retention arrangements, adverse claims or restrictions of any kind, including restriction on transfer or use, option, right of first refusal, license or other right of third parties, and other encumbrances affecting title or right to property, whether imposed by Law, agreement, understanding or otherwise and whether or not of record.

(76) "***Environment***" means all soil, real property, air, water (including surface waters, streams, ponds, drainage basins and wetlands), groundwater, water body sediments, drinking water supply, stream sediments or land, including land surface or subsurface strata, including all fish, plant, wildlife, and other biota and any other environmental medium or natural resource.

(77) "***Environmental Claim***" means any and all communications, whether written or oral, alleging potential Liability, administrative or judicial actions, suits, orders, liens, notices alleging Liability, notices of violation, investigations which have been disclosed to Seller, complaints, requests for information relating to the Release or threatened Release into the Environment of Hazardous Substances, proceedings, or other communication, whether criminal or civil, pursuant to or relating to any applicable Environmental Law, by any Person (including any Governmental Authority) based upon, alleging, asserting, or claiming any actual or potential (a) violation of, or Liability under any Environmental Law, (b) violation of any Environmental Permit, or (c) Liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, monitoring costs, natural resource damages, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to the presence, Release, or threatened Release into the Environment of any Hazardous Substances at any location related to the Acquired Assets, including, but not limited to, any off-Site location to which Hazardous Substances, or materials containing Hazardous Substances, were sent.

(78) "***Environmental Clean-up Site***" means any location which is listed or formally proposed for listing on the National Priorities List, the Comprehensive Environmental Response, Compensation and Liability Information System, or on any similar state list of sites requiring investigation or cleanup, or which is the subject of any action, suit, proceeding or investigation which has been disclosed to Seller for any alleged violation of any Environmental Law, or at which there has been a Release, or a threatened or suspected Release, of a Hazardous Substance.

(79) "***Environmental Laws***" means all Laws regarding pollution or protection of the Environment, the conservation and management of land, natural resources and wildlife or human health and safety or the Occupational Safety and Health Act (only as it relates to Hazardous Substances), including, without limitation, Laws regarding Releases or threatened Releases of Hazardous Substances (including, without limitation, Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the

manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Hazardous Substances. “***Environmental Laws***” include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.) only as it relates to Hazardous Substances, and all other Laws analogous to any of the above.

(80) “***Environmental Permit***” means any Permit under or in connection with any Environmental Law, including any and all orders, consent orders or binding agreements issued or entered into by a Governmental Authority under any applicable Environmental Law, that is used in, or necessary for, (i) the Business of the Vero Beach Electric Utility, or (ii) the ownership, use or operation of the Acquired Assets or the Real Property, in each case under clause (i) or (ii), as conducted prior to the Effective Date and as conducted prior to the Closing Date.

(81) “***ERISA***” means the Employee Retirement Income Security Act of 1974, as amended, and the applicable rules and regulations promulgated thereunder.

(82) “***ERISA Affiliate***” means any trade or business under Section 414(b), (c), (m) or (o) of the Code.

(83) “***Estimated Allocation***” has the meaning set forth in Section 3.5(a).

(84) “***Estimated Closing Statement***” has the meaning set forth in Section 3.3(b).

(85) “***Excess Uncovered Loss Amount***” means the amount by which the Final Cure Amount exceeds the sum of the Maximum Uncovered Loss Amount plus the Available Proceeds.

(86) “***Excluded Assets***” has the meaning set forth in Section 2.2.

(87) “***Excluded Contracts***” means the FMPA Agreements, the Other FMPA Agreements, the OUC-Vero Beach PPA, Seller Collective Bargaining Agreements, the Excluded Licenses, the Gas Transportation Contracts and all other Contracts that are not Assumed Contracts.

(88) “***Excluded Environmental Liabilities***” has the meaning set forth in Section 2.4(d).

(89) “***Excluded Inventory***” means any inventory of Seller described in Schedule 1.1(89).

(90) “***Excluded Liabilities***” has the meaning set forth in Section 2.4.

(91) "*Excluded Licenses*" means those license agreements listed on Schedule 1.1(91).

(92) "*Excluded Real Property*" means the Grand Harbor property described in the attached Exhibit T.

(93) "*Excluded Substations*" means substations of Seller described on Schedule 1.1(93).

(94) "*FAA*" means the Federal Aviation Administration or any successor agency thereto.

(95) "*Federal Communications Commission*" means the United States Federal Communications Commission or any successor agency thereto.

(96) "*Federal Power Act*" means the Federal Power Act, as amended.

(97) "*Federal Trade Commission*" means the United States Federal Trade Commission or any successor agency thereto.

(98) "*FERC*" means the Federal Energy Regulatory Commission or any successor agency thereto.

(99) "*Fiber Optic System*" means the fiber optic system of Seller described on Schedule 1.1(99).

(100) "*Final Cure Amount*" has the meaning set forth in Section 9.1(i).

(101) "*FMPA*" means the Florida Municipal Power Agency.

(102) "*FMPA Agreements*" means all of the following Contracts: (i) St. Lucie Project Power Sales Contract dated June 1, 1982, between FMPA and Seller, as amended; (ii) St. Lucie Project Power Support Contract dated June 1, 1982, between FMPA and Seller, as amended; (iii) the Stanton Contracts and (iv) the All-Requirements Contract.

(103) "*FPSC*" means the Florida Public Service Commission or any successor agency thereto.

(104) "*FPUA*" means the Fort Pierce Utilities Authority or any successor electric utility.

(105) "*FPUA Joint Facilities*" means the transmission and substation facilities owned jointly by Seller and FPUA in St. Lucie County, Florida, and Indian River County, Florida, including the property identified as "Substation 20" on the schedule of the Acquired Land in Fee and the Substation 20 Transmission Line R/W.

(106) "**FPUA Right of First Refusal**" means the right of first refusal with respect to certain of the Acquired Assets granted by Seller to FPUA pursuant to that certain Fort Pierce – Vero Beach Tie-Line Agreement dated May 5, 1992 between Seller and FPUA.

(107) "**Franchise Ordinance**" means the franchise ordinance agreement substantially in the form of Exhibit E attached hereto

(108) "**Gas Transportation Contracts**" means that certain Form of Service Agreement Applicable to Agreements Executed After April 1, 2002 Firm Transportation Service – Market Area FTS-2, dated January 1, 2010 and that certain Form of Service Agreement Firm Transportation Service – Market Area FTS-1, dated January 1, 2010, each between OUC and Florida Gas Transmission Company, each as amended.

(109) "**Governmental Authority**" means any federal, state, county, city, local or other governmental, regulatory or administrative agency, body, authority (including taxing authority), official, district (including water control district), commission, department, board or other governmental subdivision, court, tribunal or arbitrating body, and any national or regional electric reliability organizations, including NERC.

(110) "**Hazardous Substances**" means (a) any petroleum, asbestos, asbestos-containing material, and urea formaldehyde foam insulation and transformers or other equipment that contains polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants," "hazardous air pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

(111) "**Holding Company Act**" means the Public Utility Holding Company Act of 1935, as amended.

(112) "**Immediate Closing Election**" has the meaning set forth in Section 9.1(i).

(113) "**Income Tax**" means any Tax (a) based upon, measured by or calculated with respect to net income, profits or receipts (including, without limitation, capital gains Taxes and minimum Taxes), or (b) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise Taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (a), in each case together with any interest, penalties or additions to such Tax.

(114) "**Indebtedness**" means, with respect to any Person, at any time without duplication, (i) all indebtedness for borrowed money, (ii) all obligations for the deferred purchase price of property or services, (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iv) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (v) all obligations of such Person as lessee under leases that are or should be capitalized in accordance with generally accepted accounting practices, (vi) all

obligations of such Person under acceptance, letter of credit or similar facilities, (vii) all obligations of such Person in respect of any exchange-traded or over-the-counter derivative transaction, including interest rate or currency hedging agreements, and (viii) all obligations of such Person to guarantee any Indebtedness, leases, dividends or other payment obligations of such Person or any other Person.

(115) ***"Indemnifying Party"*** has the meaning set forth in Section 8.1(d).

(116) ***"Indemnitee"*** means either a Seller Indemnitee or a Buyer Indemnitee.

(117) ***"Independent Accounting Firm"*** means such independent accounting firm of national reputation as is mutually appointed by Seller and Buyer.

(118) ***"Intellectual Property"*** means the following rights, both statutory and common law rights, if applicable: (a) copyrights, registrations and applications for registration thereof, (b) trademarks, service marks, trade names, slogans, domain names, business names, logos, trade dress, and registrations and applications for registrations thereof, (c) patents, as well as any reissued and reexamined patents and extensions corresponding to the patents, and any patent applications, as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom, (d) trade secrets and other confidential and proprietary information, including ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable, and (e) computer programs and other software, including source and object codes.

(119) ***"Intellectual Property Licenses"*** means those agreements related to Licensed Intellectual Property.

(120) ***"Interconnection Points"*** mean the points at which Seller's Transmission Assets connect to: (a) Seller's West Substation, (b) Buyer's Emerson Substation, and (c) the FPUA Joint Facilities.

(121) ***"Interim Period"*** has the meaning set forth in Section 6.1(a).

(122) ***"Inventory"*** means materials, spare parts, supplies, fuel, chemicals and other items of inventory relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility, including the Streetlight Maintenance Inventory and other items of inventory located in Seller's warehouses at the airport.

(123) ***"IRS"*** means the United States Internal Revenue Service or any successor agency thereto.

(124) ***"Knowledge"*** means (i) with respect to Buyer, the constructive or actual knowledge (after reasonable inquiry of appropriate current (and thereafter hired) employees of Buyer) of the corporate officers of the Buyer who are charged with responsibility for the particular function relating to the matter of the inquiry and (ii) with respect to Seller, the constructive or actual knowledge (after reasonable inquiry of appropriate current (and thereafter hired) employees of Seller) of the City Attorney and City Manager of Seller.

(125) "**Law**" means any applicable foreign, federal, state or local law, constitutional provision, statute, ordinance or other law, rule, regulation, code (including any zoning code, fire code or health and safety code), Permit, or interpretation of any Governmental Authority or any Order of or by, or any Contract with, any Governmental Authority, including all Environmental Laws and NERC standards, requirements and regulations.

(126) "**Lease Agreements**" mean the Vero Beach Power Plant Site Lease Agreement, the Airport Property Lease Agreements, the District Licenses and the District Sublicenses and the Capital Leases (if any).

(127) "**Liability**" means any direct or indirect debt, liability, commitment, Indebtedness or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or un-accrued, whether liquidated or un-liquidated, and whether due or to become due) of any kind, character or nature, or any demand, claim or Action asserted or brought against the relevant Person.

(128) "**Licensed Intellectual Property**" means the Intellectual Property described in Schedule 1.1(128).

(129) "**Long Term Real Property Interest**" means, as to real property, (a) fee simple absolute interest in Buyer, (b) perpetual easement in favor of Buyer or (c) ground lease with Buyer as tenant, in each case under clause (a), (b) and (c), upon terms and conditions acceptable to Buyer in its reasonable discretion and, free and clear of Encumbrances (other than Permitted Encumbrances).

(130) "**Loss**" or "**Losses**" means any and all damages, fines, fees, penalties, deficiencies, losses, Liabilities, interest, awards, judgments, claims, Actions, diminution of value and expenses (whether or not involving a third party claim), including without limitation all Remediation costs, fees of attorneys, accountants and other experts, or other expenses of litigation or proceedings or of any claim, default or assessment relating to the foregoing.

(131) "**Material Adverse Effect**" means any change, effect, condition, fact, circumstance or event that individually or in the aggregate is or is reasonably likely to be adverse to, or have or result in an adverse effect on, (i) the condition, operations, results of operations, prospects, assets or properties of the Acquired Assets or (ii) the Business of the Vero Beach Electric Utility, in each case under clause (i) or (ii), prior to or after the Closing Date and that, in the aggregate under clause (i) and (ii) for all such changes, effects, conditions, facts, circumstances and events, amounts to a financial or economic adverse effect of at least \$10,000,000; provided, however, that (a) all adverse effects from breaches of representations, warranties, covenants or agreements of Seller hereunder, if not cured prior to the Closing after written notice from Buyer to Seller specifying such breach and adverse effect, will be determined with respect to effects thereof on Buyer after Closing, assuming that Buyer acquires the Acquired Assets and commences conducting the Business of the Vero Beach Electric Utility (whether or not Closing occurs) and irrespective of whether such representation, warranty, covenant or agreement survives Closing, and (b) none of the following shall be taken into account in determining whether there has been or will be a Material Adverse Effect: (I) any change, effect, condition, fact, circumstance or event in the economy or the electrical power

industry in general or generally affecting fuel prices; (II) any change in Buyer's policies relating to retention and compensation of or provision of benefits to Buyer's employees and the Transferred Employees, whether resulting from decisions made by Buyer, regulatory authorities, or bargaining with the union representing Buyer's employees; (III) any change in the costs anticipated to be incurred by Buyer after the Closing under the Gas Transportation Contracts; (IV) any costs to be incurred by Buyer for moving the Vero Beach Power Plant Substation and upgrading any of the other substations included as part of the Acquired Assets to provide electricity to City of Vero Beach Customers; (V) any obligations to be performed by Buyer or costs to be incurred by Buyer under the OUC-FPL PPAs; (VI) any obligations of Buyer arising under this Agreement or any of the Ancillary Agreements (other than any such obligations of Buyer arising under (x) the District Licenses and the District Sublicenses (other than the fees charged by the District to Seller as of the Effective Date), (y) the Airport Property Lease Agreements that differ from those set forth in Exhibits I-1 and I-2, including rent different than as set forth in Section 2.6 for the Airport Warehouse Lease Agreement, and (z) Dark Fiber License Agreement that differ from those set forth in Exhibit L-1); or (VII) any change, effect, condition, fact, circumstance or event primarily caused by Buyer or its Affiliates. Notwithstanding anything in the foregoing to the contrary, the calculation of the aggregate amount of the financial and economic adverse effects of all changes, effects, conditions, facts, circumstances and events described above shall include, without limitation, the net present value of all costs and expenses (calculated using a discount rate that is equal to the Prime Rate determined as of the date of such calculation) that, as of the time of calculation thereof, Buyer expects to incur after Closing in connection with the ownership, operation or maintenance of the Acquired Assets or the conduct of the Business of the Vero Beach Electric Utility that will be incremental to the costs and expenses ordinarily incurred by Seller prior to the Effective Date in connection with the ownership, operation or maintenance of the Acquired Assets or the conduct of the Business of the Vero Beach Electric Utility, excluding fuel charges; provided, that such calculation shall not take into account any such incremental costs or expenses to be incurred by Buyer with respect to the Acquired Assets that (A) are not applicable to Seller as of the date of such calculation because of its status as a Florida municipality as compared with Buyer's status as a Florida for-profit corporation (such as the payment of certain taxes); or (B) set forth above in clauses (I) through (VI) of this definition.

(132) "***Material Seller Contracts***" shall have the meaning set forth in Section 4.14(a).

(133) "***Maximum Uncovered Loss Amount***" means ten million dollars (\$10,000,000).

(134) "***Monthly Recovery Amount***" means seven hundred fifty thousand dollars (\$750,000).

(135) "***MOU***" means that certain Memorandum of Understanding dated September 19, 2012 between OUC, Buyer and Seller.

(136) "***NERC***" means the North American Electric Reliability Corporation.

(137) “*Non-Environmental Permit*” means any Permit (other than an Environmental Permit) that is used in, or necessary for, (i) the Business of the Vero Beach Electric Utility, or (ii) the ownership, use or operation of the Acquired Assets or the Real Property, in each case under clause (i) or (ii), as conducted prior to the Effective Date and as conducted prior to the Closing Date, and specifically includes the Radio Licenses.

(138) “*Observers*” has the meaning set forth in Section 6.1(b).

(139) “*Order*” means any judgment, decision, consent, assessment, decree, injunction, stay, ruling, writ or order of or by any Governmental Authority.

(140) “*Other FMPA Agreements*” means that certain Interlocal Agreement Creating the Florida Municipal Power Agency entered into by Seller as of September 10, 1979, as amended, and all other Contracts relating to FMPA, including any bond resolutions but excluding the FMPA Agreements.

(141) “*Other Real Property Interest*” means any real property lease, easement, license (other than those interests acquired under the Easements, the Lease Agreements and the Deeds), rights of way, right to use or other right in real property, including any option for any of the foregoing or for acquisitions of real property and any crossing agreement or consent and entry agreement related to the Business of the Vero Beach Electric Utility.

(142) “*OUC*” means the Orlando Utilities Commission.

(143) “*OUC Assignment Agreements*” means (a) that certain Assignment between City of Vero Beach and Orlando Utilities Commission of a 15.202% Power Entitlement Share in the St. Lucie Nuclear Power Plant Project dated January 8, 2013 between OUC and Seller, as amended, (b) that certain Assignment between City of Vero Beach and Orlando Utilities Commission of a 32.521% Power Entitlement Share in the Stanton I Project dated January 8, 2013 between OUC and Seller, as amended, and (c) that certain Assignment between City of Vero Beach and Orlando Utilities Commission of a 23.9521% Power Entitlement Share in the Stanton II Project dated January 8, 2013 between OUC and Seller, as amended.

(144) “*OUC-FPL PPAs*” means (a) that certain Power Purchase and Sale Agreement for Stanton Unit No. 1 dated January 8, 2013 between OUC and Buyer and (b) that certain Power Purchase and Sale Agreement for Stanton Unit No. 2 dated January 8, 2013 between OUC and Buyer.

(145) “*OUC Termination Agreement*” means that certain Termination and Settlement Agreement dated January 8, 2013 between OUC and Seller.

(146) “*OUC Transfer Agreements*” means (a) that certain Agreement between the City of Vero Beach and the Orlando Utilities Commission for the Transfer of 100% of the City of Vero Beach’s Power Entitlement Share of the Florida Municipal Power Agency St. Lucie Project dated January 8, 2013 between OUC and Seller, as amended, and (b) that certain Agreement between City of Vero Beach and Orlando Utilities Commission for Transfer of 100% of City of Vero Beach’s Power Entitlement Share of Stanton and Stanton II Projects dated January 8, 2013 between OUC and Seller, as amended.

(147) "***OUC-Vero Beach PPA***" means the Agreement for Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management Services dated April 21, 2008 between Seller and OUC.

(148) "***Owned Intellectual Property***" means the Intellectual Property described in Schedule 1.1(148).

(149) "***Partial Recovery Closing Election***" has the meaning set forth in Section 9.1(i).

(150) "***Party***" (and the corresponding term "***Parties***") has the meaning set forth in the preamble to this Agreement.

(151) "***PBGC***" means the Pension Benefit Guaranty Corporation established by ERISA.

(152) "***Permits***" means all permits, licenses, approvals, immunities, entitlements, certificates (including certificates of need), authorizations, franchises, registrations, waivers, variances, exemptions, orders, notices, application, filings and consents from, to, with or issued by any Governmental Authority, including all certificates of occupancy, operating permits, sign permits, development rights and approvals, zoning, building and safety and health approvals.

(153) "***Permitted Encumbrances***" means: (i) as to the Real Property Interests, those exceptions to title listed in Schedule 1.1(153); (ii) Encumbrances created by any mortgage indenture or the Vero Beach Electric Utility Bonds or the Vero Beach Revenue Note that will be released prior to or at the Closing; provided, that such Encumbrances shall cease to be Permitted Encumbrances as of the Closing; (iii) statutory liens for Taxes or other governmental charges or assessments not yet delinquent; (iv) statutory liens (including mechanics' and materialmen's liens and other like statutory liens and inchoate liens incurred in connection with worker's compensation, unemployment insurance, and social security laws) arising in the ordinary course of business securing payments not yet delinquent (or any such lien for a delinquent payment that has been waived in writing by the holder thereof or any such lien for a delinquent payment for which Seller has obtained a waiver, bond or other security in accordance with applicable Law to fully protect the Acquired Assets from any and all claims that may be made on account of any such lien); (v) existing zoning, entitlement, environmental or conservation restriction and other land use and environmental regulations imposed by Governmental Authorities and any existing conditions and obligations arising under any Permit so long as such restrictions, regulations, conditions and obligations do not materially interfere with the Business of the Vero Beach Electric Utility in the ordinary course as conducted prior to the Effective Date and as conducted prior to the Closing Date; (vi) the covenants and restrictions set forth in this Agreement or in any of the Ancillary Agreements; and (vii) Encumbrances with respect to the Acquired Assets created by or resulting from the acts or omissions of Buyer. In addition, (i) when the term "Permitted Encumbrances" is used with respect to any Real Property Interests created pursuant to any Easement or any Other Real Property Interest, "Permitted Encumbrances" shall be deemed to include matters of record affecting such Real Property Interest so long as (a) such matters of record are not Encumbrances that secure any Indebtedness of Seller and (b) any

restrictions, conditions or obligations arising from such matters of record do not to Seller's Knowledge materially interfere with the Business of the Vero Beach Electric Utility in the ordinary course as conducted prior to the Effective Date and as conducted prior to the Closing Date and (ii) if Seller is unable to secure a release or satisfaction of the matter set forth in item number 3 on Schedule 4.7(b), then the matter set forth in item number 3 on Schedule 4.7(b) shall be treated for purposes of Section 4.7(c) as a "Permitted Encumbrance."

(154) "**Person**" means a natural person, a corporation,, a partnership, a joint venture, a corporation, a union, a limited liability company, a trust, an unincorporated organization, an association, a joint stock company, trustee, estate, real estate investment trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof or a Governmental Authority or any other separate legal entity recognized pursuant to Law.

(155) "**Pole Attachment Agreement for Seller Fiber Optic System**" means an agreement substantially in the form of Exhibit K attached hereto.

(156) "**Post-Closing Adjustment**" has the meaning set forth in Section 3.3(c).

(157) "**Post-Closing Consumption Period**" has the meaning set forth in Section 6.24.

(158) "**Post-Closing Statement**" has the meaning set forth in Section 3.3(c).

(159) "**Post-Closing Taxes**" means Taxes (other than Transfer Taxes to which Section 6.8(a) applies) attributable to periods (or portions thereof) beginning on or after the Closing Date, determined by closing the books at the end of the Closing Date for purposes of Income Taxes and by pro rating all other Taxes based on the number of days in the period before and after the Closing Date; provided, however, if the Acquired Assets or the Business of the Vero Beach Electric Utility were not subject to a Tax in the hands of the Seller but become subject to that Tax in the hands of the Buyer, that Tax shall be a Post-Closing Tax in its entirety.

(160) "**Pre-Closing Taxes**" means Taxes (other than Transfer Taxes to which Section 6.8(a) applies) attributable to periods (or portions thereof) ending on or before the Closing Date, determined by closing the books at the end of the Closing Date for purposes of Income Taxes and by pro rating all other Taxes based on the number of days in the taxable period before and after the Closing Date; provided, however, if the Acquired Assets or the Business of the Vero Beach Electric Utility were not subject to a Tax in the hands of the Seller but become subject to that Tax in the hands of the Buyer, no portion of that Tax shall be a Pre-Closing Tax.

(161) "**Pre-Closing Consumption Period**" has the meaning set forth in Section 6.24.

(162) "**Prepaid Expenses**" means all expenses (excluding pre-payments for tangible assets such as inventory or property, plant and equipment, but including prepaid maintenance expense) paid in cash before being incurred for GAAP purposes.

(163) “**Prime Rate**” shall mean, for any date, the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published).

(164) “**Proposed Post-Closing Adjustment**” has the meaning set forth in Section 3.3(c).

(165) “**Public Document**” has the meaning set forth in Section 6.5.

(166) “**Purchase Price**” has the meaning set forth in Section 3.2.

(167) “**Radio Licenses**” means the Permits set forth in Schedule 1.1(167).

(168) “**Real Property**” means any real property on which any of the Acquired Assets are located or real property relating to, or used in or for, the Business of the Vero Beach Electric Utility.

(169) “**Real Property Interests**” means the interest held by Seller in Real Property.

(170) “**Real Property Interest Instrument**” means any license, deed, lease, easement, agreement or other instrument creating a Real Property Interest.

(171) “**Recovery Period**” means the period that commences on the date of notice of a Closing Election and ends on the date that is *X* months thereafter, where “*X*” is equal to the quotient (rounded up or down to the next whole number) of the Excess Uncovered Loss Amount divided by the Monthly Recovery Amount.

(172) “**Referendum Question**” means the referendum question relating to the sale and purchase contemplated by this Agreement set forth on Exhibit X.

(173) “**Release**” means any actual, threatened or alleged spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping or disposing of a Hazardous Substance into the Environment or within any building, structure, facility or fixture.

(174) “**Reliability Call Agreement**” means that certain Reliability Call Agreement dated January 8, 2013 between OUC and FPL.

(175) “**Remaining Portion**” has the meaning set forth in Section 6.23.

(176) “**Remediation**” means any action of any kind required by applicable Law to address the presence or Release of Hazardous Substances, including but not limited to: (a) monitoring, investigation, assessment, treatment, cleanup containment, removal, mitigation, response or restoration work, as well as obtaining any Permits necessary to conduct any such activity; (b) preparing and implementing any plans or studies for any such activity; and (c)

obtaining a written notice from a Governmental Authority with competent jurisdiction under Environmental Laws, that no material additional work is required.

(177) “*Representatives*” of a Party means the Party and its Affiliates and their directors, officers, employees, agents and advisors (including, without limitation, accountants, counsel, environmental consultants, financial advisors and other authorized representatives).

(178) “*Represented Transferred Employees*” means any Transferred Employee whose employment with Seller was subject to any Seller Collective Bargaining Agreement and who will be employed by the Buyer in positions that are subject to a collective bargaining agreement.

(179) “*Retained Employees*” means all Seller Employees who are actively employed by Seller as of the Closing Date and who do not become Transferred Employees as of the Closing Date.

(180) “*Schedules*” means the schedules attached to this Agreement.

(181) “*Seller*” has the meaning set forth in the preamble to this Agreement.

(182) “*Seller Ancillary Agreements*” means the District Licenses and the Seller Pole Attachment Termination Agreements.

(183) “*Seller Benefit Plans*” has the meaning set forth in Section 4.12(a).

(184) “*Seller Collective Bargaining Agreements*” means the Contract between Seller and Teamsters Local Union No. 769, dated October 1, 2010 and any other Contract between Seller and any trade union, labor organization, collective bargaining representative or employee representative of any Transferred Employees concerning terms and conditions with respect to employment with Seller, as well as all modifications of, or amendments to, any such agreements.

(185) “*Seller Contracts*” means all Contracts (other than Excluded Contracts) relating to the Acquired Assets or the Business of the Vero Beach Electric Utility (i) that are in favor, or for the benefit, of Seller or (ii) to which Seller is a Party or by which any of its assets may be bound, including (A) the Real Property Interest Instruments, the Assumed Contracts and the Intellectual Property Licenses, (B) Contracts associated with the forecasting, modeling, management and operation of the Acquired Assets, (C) Contracts associated with emergency or wind storm preparedness and (D) Contracts leasing, or providing the right to use, to attach to or of access to, any portion of the Acquired Assets, including the Attachment Agreements.

(186) “*Seller Defined Benefit Plan*” means the City of Vero Beach General Employee Retirement Plan in effect on the Effective Date.

(187) “*Seller Employee*” means an hourly-paid or salaried employee of Seller, who receives an Internal Revenue Service Form W-2 from Seller, who is employed by Seller as of the Closing Date, and whose work responsibilities involve principally the Vero Beach Electric Utility, which employees are set forth in Schedule 6.10(a) by position.

(188) “*Seller Executed Ancillary Agreements*” means the OUC Termination Agreement, the OUC Assignment Agreements and the OUC Transfer Agreements.

(189) “*Seller Fundamental Representations*” means the representations and warranties made in Sections 4.1, 4.2, 4.3(i), 4.7(c) and 6.7.

(190) “*Seller Indemnitee*” has the meaning set forth in Section 8.1(a).

(191) “*Seller Pole Attachment Termination Agreements*” means the agreements to be negotiated and executed by Seller and each Person (other than Buyer) that attaches or uses poles of Seller, including but not limited to AT&T, Comcast and BellSouth, regarding the termination of such Person’s rights relating to poles of Seller.

(192) “*Seller’s Agent(s)*” has the meaning set forth in Section 6.1(b).

(193) “*Seller’s Past Practices*” means the recent historical operation, maintenance and repair practices, methods and actions performed prior to the Effective Date by, or on behalf of, Seller with respect to the Acquired Assets, but in each case shall require such practices, methods and actions to be performed in a manner complying with applicable Law.

(194) “*Service Territory*” means the area described as Seller’s service territory in the map attached hereto as Schedule 1.1(194).

(195) “*Spare Parts*” means those spare parts and equipment identified on Schedule 1.1(195) hereto.

(196) “*Stanton Contracts*” means all of the following Contracts: (a) Stanton I Power Sales Contract, dated January 16, 1984, between FMPA and Seller; (b) Stanton I Power Support Contract dated January 16, 1984, between FMPA and Seller, as amended; (c) Stanton II Power Sales Contract executed on or about May 24, 1991, between FMPA and Seller, as amended; and (d) Stanton II Project Support Contract executed on or about May 24, 1991, between FMPA and Seller, as amended.

(197) “*Streetlight Agreement*” means Buyer’s standard form of street lighting agreement that is applicable on the Closing Date, along with Buyer’s street lighting rate schedule on file at the FPSC that is effective on the Closing Date. For reference purposes only, Exhibit J contains a copy of the Streetlight Agreement that is applicable on the Effective Date. For the avoidance of doubt, the Streetlight Agreement that is required to be executed under this Agreement may be different than the form attached hereto as Exhibit J.

(198) “*Streetlight Assets*” means the assets described in Schedule 1.1(198) and includes the Streetlight Maintenance Inventory and all poles with Seller-owned streetlights.

(199) “*Streetlight Maintenance Inventory*” means the assets described in Schedule 1.1(199).

(200) “*Substation 20 Transmission R/W*” means the easements or other rights appurtenant to Substation 20 described in Exhibit R attached hereto.

(201) “*Substation Access Agreement*” means an agreement substantially in the form of Exhibit L-2 attached hereto.

(202) “*Taxes*” means, all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, local, provincial or foreign taxing authority, including but not limited to, income, gross receipts, excise, real or personal property, sales, transfer, customs, duties, franchise, payroll, withholding, social security, receipts, license, stamp, occupation, employment or other taxes, including any interest, penalties or additions attributable thereto, and any payments to any state, local, provincial or foreign taxing authorities in lieu of any such taxes, charges, fees, levies or assessments. The term “*Tax*” means any one of the foregoing Taxes.

(203) “*Tax Return*” means any return, report, form, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) required to be supplied to any Governmental Authority with respect to Taxes including amendments thereto, including any information return filed by a tax exempt organization.

(204) “*Termination Date*” means, subject to Section 9.1(i), the earlier of:

(a) December 31, 2016; and

(b) the later of:

(i) the date that is three (3) months after the effective date of the withdrawal by Seller from the All-Requirements Contract, or

(ii) the second anniversary of the Effective Date.

(205) “*Termination of Territorial Boundary Agreement*” means the agreement substantially in the form of Exhibit F attached hereto, to be delivered at the Closing, which terminates the Territorial Boundary Agreement between Buyer and Seller dated June 11, 1980, as amended.

(206) “*Third Party Claim*” has the meaning set forth in Section 8.2(a).

(207) “*Total Compensation*” means base pay, authorized overtime, and benefits provided under all applicable Benefit Plans.

(208) “*Transferable Permits*” means the Environmental Permits and the Non-Environmental Permits.

(209) “*Transferred Employee Records*” means all records related to Transferred Employees, including but not limited to the following information: (i) skill and development training, (ii) seniority histories, (iii) salary and benefit information, (iv) Occupational, Safety and Health Administration reports, (v) active medical restriction forms, (vi) fitness for duty, (vii) disciplinary actions, (viii) job performance appraisals and/or evaluations, (ix) employment applications, (x) bonuses, (xi) job history and (xii) access authorization records.

(210) "***Transferred Employees***" means all Seller Employees whose primary work responsibilities are with respect to the Acquired Assets, who are actively employed by Seller as of the Closing Date and who are offered and accept continued employment with Buyer as of the Closing Date.

(211) "***Transfer Taxes***" means any real property transfer, sales, use, value added, stamp, documentary, recording, registration, conveyance, stock transfer, intangible property transfer, personal property transfer, gross receipts, registration, duty, securities transactions or similar fees or Taxes or governmental charges (together with any interest or penalty, addition to Tax or additional amount imposed) as levied by any Governmental Authority in connection with the transactions contemplated by this Agreement, including, without limitation, any payments made in lieu of any such Taxes or governmental charges which become payable in connection with the transactions contemplated by this Agreement.

(212) "***Transmission Assets***" means the electric transmission facilities relating to, or used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility or located on the Real Property or the Vero Beach Power Plant Site (and other property and assets associated with or ancillary thereto); including, but not limited to: the facilities, equipment and other tangible property and assets that connect the Vero Beach Power Plant and the Distribution Assets to the Interconnection Points (and other property and assets associated with or ancillary thereto), transformers, breakers, capacitor banks, switches, arresters, instrument transformers, substation structures, substations, buswork, substation battery and chargers, relay protection panels, relay communications/carriers, remote telemetry and control equipment, metering, fault recorders, sequence of event recorders, annunciators, relay vaults, substation fencing, transmission lines, conductors, transmission line structures and poles, and control buildings, and without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1(212)

(213) "***Union Representative***" means the labor union that represents the craft or class of Represented Transferred Employees and Converted Unrepresented Transferred Employees after the Closing Date.

(214) "***Unrepresented Transferred Employees***" means any Transferred Employees whose employment with the Seller was not subject to any Seller Collective Bargaining Agreement and who will be employed by Buyer in positions that are also not subject to a collective bargaining agreement.

(215) "***Vehicles***" means the vehicles listed in Schedule 1.1(215).

(216) "***Vero Beach Electric Utility***" means the electric utility system of electricity generation, transmission and distribution commonly known as "The City of Vero Beach Electric Utility", including the Vero Beach Power Plant.

(217) "***Vero Beach Electric Utility Bonds***" means the Indebtedness created or evidenced by, or arising under, the Bond Resolution, including any principal, interest, fees, penalties and other amounts payable thereunder.

(218) "*Vero Beach Power Plant*" means (a) the nominal 157 MW electric generating facility located on the Vero Beach Power Plant Site, consisting of five (5) generating units (two (2) of which operate in combined cycle), and including the combustion turbine generators, steam turbine generators, heat recovery steam generators, boilers, cooling tower, transformers and other structures, facilities, appliances, lines, conductors, instruments, apparatus, components and equipment comprising and integrating the entire facility, and (b) all other facilities and equipment located on the Vero Beach Power Plant Site, including the Vero Beach Power Plant Substation.

(219) "*Vero Beach Power Plant Expectations*" means the maintenance, repair and replacement of the Acquired Assets in a manner that complies with applicable Law, that is consistent with the Capital Expenditure and Maintenance Plan and that ensures that (a) the Vero Beach Power Plant will be capable of operation for four (4) years after the Closing Date in a manner consistent with Seller's Past Practices and (b) the other Acquired Assets (such as the Transmission Assets and the Distribution Assets) will be capable of operating indefinitely in a manner consistent with Seller's Past Practices.

(220) "*Vero Beach Power Plant Site*" means the real property described in Exhibit S.

(221) "*Vero Beach Power Plant Site Lease Agreement*" means a lease agreement and memorandum of lease substantially in the form of Exhibit G attached hereto, which includes Seller as lessor and Buyer as lessee, a term of three (3) years from the Closing Date, with an option for Buyer to extend for one (1) additional year, and rent of \$1,500,000 per year payable monthly.

(222) "*Vero Beach Power Plant Substation*" means the substation and other transmission and distribution facilities and equipment located on the Vero Beach Power Plant Site.

(223) "*Vero Beach Revenue Note*" means the \$8,247,000 City of Vero Beach, Florida Electric System Refunding Revenue Note, Series 2008, issued pursuant to the Loan Agreement, dated as of June 10, 2008, between Seller and Regions Bank, and any and all renewals or replacements thereof.

Section 1.2 Certain Interpretive Matters.

- (a) Unless otherwise required by the context in which any term appears:
 - (i) Capitalized terms used in this Agreement shall have the meanings specified in this Article.
 - (ii) The singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.
 - (iii) References to "Articles", "Sections", "Schedules" or "Exhibits" shall be to articles, sections, schedules or exhibits of or to this Agreement, and references to

“paragraphs” or “clauses” shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs.

(iv) The words “herein”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; and the words “include”, “includes” or “including” shall mean “including, but not limited to.”

(v) The term “day” shall mean a calendar day, commencing at 12:00 a.m. (Eastern Time). The term “week” shall mean any seven consecutive day period commencing on a Sunday, and the term “month” shall mean a calendar month; provided that when a period measured in months commences on a date other than the first day of a month, the period shall run from the date on which it starts to the corresponding date in the next month and, as appropriate, to succeeding months thereafter. Whenever an event is to be performed or a payment is to be made by a particular date and the date in question falls on a day which is not a Business Day, the event shall be performed, or the payment shall be made, on the next succeeding Business Day; provided, however, that all calculations shall be made regardless of whether any given day is a Business Day and whether or not any given period ends on a Business Day.

(vi) All references to a particular Person shall include such Person’s successors and permitted assigns unless otherwise specifically provided herein.

(vii) All references herein to any Law, Permit or Contract shall be to such Law, Permit or Contract as amended, supplemented or modified from time to time unless otherwise specifically provided herein.

(viii) The words “substantially in the form of” or words of similar effect when used with respect to the form of any Ancillary Agreement or other agreement or document that has been included as an Exhibit to this Agreement and that is to be executed and delivered by the Parties and/or any third party or third parties, or executed and delivered by one of the Parties or any third party or third parties, in either case after the Effective Date pursuant to, or in order to satisfy, any covenant, obligation or condition set forth in this Agreement shall refer to the applicable form that is attached to this Agreement with such changes as the Parties may otherwise agree are necessary or appropriate, with such agreement to be evidenced by the Parties’ execution thereof, including, without limitation, the insertion of mutually agreeable legal descriptions following preparation of an American Land Title Association (ALTA) survey for any applicable real property; provided, that, if such agreement or document is not executed by both of the Parties and has been executed by all of the parties thereto in order to satisfy, any covenant, obligation or condition set forth in this Agreement, the Closing of the transactions contemplated by this Agreement shall evidence the Parties’ agreement to any changes to such agreement or document.

(b) The titles of the articles, sections, schedules and exhibits herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

(c) The Parties acknowledge and agree that (i) this Agreement (A) shall be construed and interpreted as an arms-length contract entered into by parties with equal bargaining power and (B) was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party, (ii) the Parties have agreed to the wording of this Agreement, and (iii) none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

(d) The Schedules and Exhibits hereto are incorporated in and are intended to be a part of this Agreement.

ARTICLE II PURCHASE AND SALE

Section 2.1 Acquired Assets.

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), all of the property, assets and rights (other than the Excluded Assets), of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, owned (or hereafter acquired), wherever located, that relate to, or are used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility (collectively, the "*Acquired Assets*"); provided that the Acquired Assets shall specifically include the following property, assets and rights (other than the Excluded Assets):

- (a) the Vero Beach Power Plant;
- (b) the Transmission Assets;
- (c) the Distribution Assets;
- (d) the Customer Service Assets;
- (e) the leasehold interests under any Capital Leases in the Capital Lease Assets;
- (f) the Vehicles;
- (g) All machinery, mobile or otherwise, equipment (including computer hardware and communications equipment), tools, works in progress, fixtures, furniture and furnishings and other personal property that relate to, or are used in or for, the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility, including all Inventory and Spare Parts;
- (h) All books, operating records, licensing records, quality assurance records, purchasing records, equipment repair, maintenance or service records, operating, safety and maintenance manuals, inspection reports, environmental assessments, engineering design plans, documents, blueprints and as built plans, specifications, drawings, procedures and other similar

items of Seller, wherever located, relating to or used in or for, the Vero Beach Electric Utility, other Acquired Assets or the Business of the Vero Beach Electric Utility, whether existing in hard copy or magnetic or electronic form (collectively, the "***Business Books and Records***");

- (i) [*Reserved*];
- (j) All rights, title and interest in, to and under the Real Property Interests, and any of Seller's improvements to the Real Property, together with all rights incidental or appurtenant thereto, including, without limitation, all related rights of ingress and egress;
- (k) All rights, title and interest in, to and under the Transferable Permits (other than Excluded Liabilities thereunder);
- (l) All rights, title and interest in, to and under Assumed Contracts (other than Excluded Liabilities thereunder) and other Seller Contracts (other than Excluded Liabilities thereunder), including any unexpired, warranties and guarantees from third parties;
- (m) All rights, title and interest in, to and under the Intellectual Property Licenses;
- (n) the Owned Intellectual Property;
- (o) Seller's rights, title and interest in the FPUA Joint Facilities;
- (p) the Streetlight Assets;
- (q) the rights of Seller in and to any causes of action, Actions or claims (including, without limitation, rights under insurance policies to proceeds, refunds or distributions thereunder paid on or after the Closing Date with respect to periods before the Closing Date) and defenses against third parties (including indemnification and contribution) relating to any Assumed Liabilities;
- (r) the Transferred Employee Records;
- (s) the Electric Utility Accounting Records;
- (t) emissions allowances and credits;
- (u) All models and systems associated with the forecasting, modeling, management and operation of the Acquired Assets; and
- (v) All property, assets and rights, excluding cash, associated with emergency or wind storm preparedness for the Vero Beach Power Plant or other Acquired Assets.

Notwithstanding the foregoing, the transfer of the Acquired Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Acquired Assets unless Buyer expressly assumes that Liability pursuant to Section 2.3. Seller may retain a copy of all Business Books and Records and Electric Utility Accounting Records as deemed appropriate by Seller.

Section 2.2 Excluded Assets.

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed as conferring on Buyer, and Buyer is not acquiring, any right, title or interest in or to the following specific property, assets and rights (the “*Excluded Assets*”), which are hereby specifically excluded from the sale and the definition of Acquired Assets herein and which shall remain the property of Seller after the Closing:

- (a) All cash, cash equivalents, bank deposits and bank accounts, and any income, sales, payroll or other receivables relating to Taxes, in each case relating to the Acquired Assets prior to the Closing Date;
- (b) All personnel records of Seller relating to the Vero Beach Electric Utility, except the Transferred Employee Records;
- (c) All Benefit Plan assets, including those held in any related trust or otherwise, including without limitation, all assets related to the Seller Defined Benefit Plan;
- (d) Any refund or credit (i) of Pre-Closing Taxes paid by Seller in respect of the Acquired Assets, whether such refund is received as a payment or as a credit against future Taxes, or (ii) of items paid by Seller that arose under any agreement which is part of the Acquired Assets and that relate to a period (or portion thereof) ending prior to the Closing Date;
- (e) All rights in, to or under the Excluded Contracts, the Seller Ancillary Agreements and the Seller Executed Ancillary Agreements;
- (f) All Customer accounts receivables for periods prior to the Closing Date;
- (g) Fee ownership of the Vero Beach Power Plant Site;
- (h) The Fiber Optic System;
- (i) the Gas Transportation Contracts;
- (j) Any vehicle that is not a Vehicle;
- (k) Excluded Substations;
- (l) Excluded Real Property;
- (m) Excluded Inventory;
- (n) the Customer Deposits;
- (o) Any wastes or Hazardous Substances generated in relation to the Vero Beach Electric Utility or the Business of the Vero Beach Electric Utility prior to the Closing Date; and
- (p) All rights of Seller under this Agreement and the Ancillary Agreements.

Section 2.3 Assumed Liabilities.

On the Closing Date, Buyer shall deliver to Seller the Assignment and Assumption Agreement pursuant to which Buyer shall assume and agree to discharge when due, all of the Liabilities of Seller specifically listed below, other than the Excluded Liabilities (collectively, “***Assumed Liabilities***”):

- (a) All Liabilities of Seller arising on or after the Closing Date under (i) the Real Property Interest Instruments, (ii) the Assumed Contracts, (iii) the Intellectual Property Licenses, and (iv) to the extent an Acquired Asset, the Transferable Permits, in each case under items (i) to (iv), in accordance with the terms thereof;
- (b) The Assumed Pension Liability;
- (c) All Liabilities of Seller with respect to Transferred Employees for which Buyer is responsible pursuant to Section 6.10; and
- (d) All Liabilities for (i) Transfer Taxes for which Buyer is liable pursuant to Section 6.8(a) and (ii) Post-Closing Taxes, other than Income Taxes, if any, arising from the transactions contemplated by this Agreement.

Section 2.4 Excluded Liabilities.

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed to impose on Buyer, and Buyer shall not assume or be obligated to pay, perform or otherwise discharge, the following Liabilities (the “***Excluded Liabilities***”), with all of such Excluded Liabilities remaining the responsibility, and as obligations hereunder, of Seller:

- (a) Any Liabilities in respect of any Excluded Assets;
- (b) Subject to Section 3.6, all Liabilities under or relating to the Real Property Interest Instruments, the Assumed Contracts, the Intellectual Property Licenses and the Transferable Permits (i) arising out of or relating to any event, condition, circumstance, act or omission occurring prior to the Closing Date, including any Breach that occurred prior to the Closing Date or any payment obligation arising prior to the Closing Date or invoice received prior to the Closing Date (other than invoices for Prepaid Expenses payable by Buyer pursuant to Section 3.3(a)(ii)), or (ii) for payment of goods delivered or services rendered prior to the Closing Date;
- (c) Any Liability under or relating to any Seller Contract that is not an Assumed Contract;
- (d) All Liabilities under or related to Environmental Laws, Environmental Permits or Environmental Claims with respect to the Business of the Vero Beach Electric Utility or the Acquired Assets relating to or arising from any event, condition, circumstance, act or omission occurring prior to the Closing Date, including relating to or arising from the presence or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Acquired Assets or the Real Property prior to the Closing Date (“***Excluded Environmental Liabilities***”);

(e) All Liabilities for (i) Transfer Taxes for which Seller is liable pursuant to Section 6.8(a) and (ii) Pre-Closing Taxes, including for the avoidance of doubt Income Taxes, if any due by Seller, arising from the transactions contemplated by this Agreement;

(f) All Liabilities with respect to the Transferred Employees relating to or arising from any event, condition, circumstance, act or omission occurring prior to the Closing Date, other than Liabilities specifically assumed by Buyer in Section 2.3(d);

(g) All Liabilities with respect to Retained Employees;

(h) Except as otherwise set forth in Section 6.10, all Liabilities relating to any Seller Benefit Plans, or any other plan, program, arrangement or policy, including accrued sick pay, established or maintained in whole or in part by Seller or by any Person (whether or not incorporated) which is or ever has been under common control, or which is or ever has been treated as a single employer, with Seller or to which Seller contributes or contributed, including, but not limited to any such Liability of Seller (i) for the termination or discontinuance of, or the Seller's withdrawal from, any such Benefit Plan (including any multiemployer plan as defined in Section 3(37) of ERISA), (ii) relating to benefits payable under any Seller Benefit Plans, (iii) with respect to noncompliance with the notice requirements of COBRA under ERISA or the Public Health Service Act, to the extent applicable, (iv) with respect to any noncompliance with the Code or any other applicable Laws, and (v) with respect to any suit, proceeding or claim which is brought against Seller, any Seller Benefit Plan or any fiduciary or former fiduciary of, any of the Seller Benefit Plans;

(i) Any Liabilities relating to the failure to hire, the employment or services or termination of employment or services of any individual, including wages, compensation, benefits, affirmative action, personal injury, discrimination, harassment, retaliation, wrongful discharge, unfair labor practices, or constructive termination by Seller of any individual, or any similar or related claim or cause of action attributable to any actions or inactions by Seller prior to the Closing Date with respect to the Acquired Assets, the Transferred Employees, independent contractors, applicants, and any other individuals who are determined by a court or by a Governmental Authority to have been applicants or employees of Seller; and

(j) Any other Liabilities not expressly assumed by Buyer pursuant to Section 2.3 or Liabilities expressly allocated to or retained by Seller in this Agreement.

Section 2.5 Capital Leases.

Notwithstanding anything to the contrary in this Agreement, Buyer shall have the option, by notice to Seller not less than three (3) Business Days prior to the Closing Date, to lease any part or parts of the Acquired Assets pursuant to one or more Capital Leases in lieu of acquiring title to such part or parts of the Acquired Assets. The Buyer's notice shall describe in reasonable detail the Acquired Assets to be leased pursuant to each such Capital Lease ("Capital Lease Assets"). Such option may be exercised by Buyer one or more times. At Closing, Buyer and Seller will execute and deliver each of the Capital Leases and the applicable Acquired Assets that are subject to such Capital Leases shall not be included in the other instruments of transfer or leases executed and delivered by Seller at Closing pursuant to Section 3.7. The lease payment

under the Capital Leases shall be determined by Buyer in its sole discretion, shall be paid by Buyer to Seller in full at Closing, and the amount of such lease payment shall reduce the Purchase Price on a dollar for dollar basis. The leasehold interests in the Capital Lease Assets shall be deemed Acquired Assets hereunder.

Section 2.6 Airport Warehouse Lease Agreement Option.

Notwithstanding anything to the contrary in this Agreement, Buyer shall have the option, by notice to Seller not less than three (3) Business Days prior to the Closing Date, to lease a portion of Seller's airport warehouse property pursuant to the Airport Warehouse Lease Agreement (the "*Airport Warehouse Lease Agreement Option*"), on terms set forth in the Airport Warehouse Lease Agreement, including rent (subject to Section 6.4(g)) in the amount of \$117,241.60 per year, multiplied by the percentage of the total square feet of the warehouse facility that Buyer will use, payable in monthly installments. If Buyer exercises the Airport Warehouse Lease Agreement Option, then such agreement shall be an Ancillary Agreement hereunder.

**ARTICLE III
THE CLOSING**

Section 3.1 Closing.

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the sale, assignment, conveyance, transfer and delivery of the Acquired Assets to Buyer shall take place at a closing (the "*Closing*"), to be held at 700 Universe Blvd, Juno Beach, FL 33408, at 10:00 a.m. local time, or another mutually acceptable time and location, on the date that is the first day of the month following the day on which the last of the conditions precedent to Closing set forth in Article VII of this Agreement have been either satisfied or waived by the Party for whose benefit such conditions precedent exist (except with respect to those conditions which by their terms are to be satisfied at Closing), but in no event earlier than January 1, 2014 or later than the Termination Date, unless the Parties mutually agree on another date. The date of Closing is hereinafter called the "*Closing Date*." Except as provided in Section 6.11, the Closing shall be effective for all purposes as of 12:01 a.m. on the Closing Date. Subject to Article VII, the Parties shall cause the Closing to occur as soon as possible after the Effective Date.

Section 3.2 Purchase Price.

Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Acquired Assets, Buyer will pay or cause to be paid to Seller in accordance with Section 3.4 the sum of One Hundred Eleven Million Five Hundred Thousand Dollars (\$111,500,000) (the "*Purchase Price*"), plus or minus any adjustments to such Purchase Price pursuant to the provisions of Section 3.3 below.

Section 3.3 Adjustment to Purchase Price.

(a) Subject to Sections 3.3(b) and 3.3(c), the Purchase Price shall be adjusted, without duplication, to account for the items set forth in this Section 3.3(a):

(i) The Purchase Price shall be adjusted to account for the items prorated as of the Closing Date pursuant to Section 3.6;

(ii) The Purchase Price shall be increased by the amount of Prepaid Expenses; and

(iii) The Purchase Price shall be adjusted in accordance with:

(1) Section 2.5;

(2) Section 6.11(b) and (c);

(3) Section 6.16(a);

(4) Section 6.17; and

(5) Section 9.1(i).

(b) No fewer than ten (10) Business Days prior to the Closing Date, Seller shall prepare in good faith and deliver to Buyer an estimated closing statement (the "***Estimated Closing Statement***") that shall set forth Seller's best estimate of all estimated adjustments to the Purchase Price required by Section 3.3(a) (collectively, the "***Estimated Closing Adjustments***") together with reasonable supporting information and documentation, which shall include a reasonably detailed explanation of the calculation of the Estimated Closing Adjustments and documentation sufficient to confirm the accuracy of such calculation. The Estimated Closing Statement shall be prepared using the same accounting principles, policies and methods as Seller has historically used in connection with the calculation of the items reflected on such Estimated Closing Statement.

(c) Within sixty (60) Business Days after the Closing Date, Seller shall prepare and deliver to Buyer a final closing statement (the "***Post-Closing Statement***") that shall set forth all adjustments, subject to Section 3.6(b), to the Purchase Price required by Section 3.3(a) (the "***Proposed Post-Closing Adjustment***") together with reasonable supporting information and documentation, which shall include a reasonably detailed explanation of the calculation of the Proposed Post-Closing Adjustments and documentation sufficient to confirm the accuracy of such calculation. The Post-Closing Statement shall be prepared using the same accounting principles, policies and methods as Seller has historically used in connection with the calculation of the items reflected on such Post-Closing Statement. Within thirty (30) days after the delivery of the Post-Closing Statement by Seller to Buyer, Buyer may object to the Proposed Post-Closing Adjustment in writing. Seller and Buyer agree to cooperate with one another to provide one another with the information used to prepare the Post-Closing Statement and information relating thereto. If Buyer objects to the Proposed Post-Closing Adjustment, the Parties shall attempt to resolve such dispute by negotiation. If the Parties are unable to resolve such dispute

within thirty (30) days after any objection by Buyer, the Parties shall appoint the Independent Accounting Firm (with the cost of such Independent Accounting Firm to be borne equally by the Parties) to review the Proposed Post-Closing Adjustment and determine, subject to Section 3.6(b), the appropriate adjustment to the Purchase Price, if any, within thirty (30) days after such appointment. The Parties agree to cooperate with the Independent Accounting Firm and provide it with such information as it reasonably requests to enable it to make such determination. The Independent Accounting Firm shall act as an expert and not as an arbitrator and shall make findings only with respect to the remaining disputes so submitted to it (and not by independent review). The finding of such Independent Accounting Firm shall be binding on the Parties hereto. Upon determination of the appropriate adjustment (the “*Post-Closing Adjustment*”) by agreement of the Parties or by binding determination of the Independent Accounting Firm, the Party owing the difference shall deliver such amount to the other Party no later than two (2) Business Days after such determination, in immediately available funds or in any other manner as reasonably requested by the payee.

Section 3.4 Payment of Purchase Price.

(a) At the Closing, Buyer shall pay Seller the Purchase Price (as adjusted by Section 3.3).

(b) Payment of the Purchase Price shall be made by wire transfer of immediately available funds denominated in U.S. dollars or by such other means as are agreed upon by Seller and Buyer.

Section 3.5 Allocation of Purchase Price.

(a) At least thirty (30) days prior to the Closing Date, Buyer shall use Commercially Reasonable Efforts to make an estimated allocation among the Acquired Assets of the sum of the Purchase Price and the Assumed Liabilities that is consistent with the allocation methodology provided by Section 1060 of the Code and the regulations promulgated thereunder (the “*Estimated Allocation*”). The Estimated Allocation (or other allocation determined by Buyer in its sole discretion) will be used for transfer tax and for all other Closing document purposes.

(b) Within ninety (90) days after the Closing Date, Buyer shall make an allocation among the Acquired Assets of the sum of the Purchase Price (including any adjustments thereto) and the Assumed Liabilities (together with any other relevant items) that is consistent with the allocation methodology provided by Section 1060 of the Code and the regulations promulgated thereunder (the “*Allocation*”). Seller (to the extent Seller is required to make any such reports) shall report the transactions contemplated by this Agreement for all purposes in a manner consistent with the Allocation. Subsequent to the preparation of the Estimated Allocation and the Allocation, Buyer and Seller agree to provide the other with any information required to complete Form 8594 or other filing or report within ten (10) days of the request for such information. Buyer and Seller shall notify and provide the other with reasonable assistance in the event of an examination, audit or other proceeding relating to the allocation of the Purchase Price pursuant to this Section 3.5. Buyer and Seller shall treat the transaction contemplated by this Agreement as the acquisition by Buyer of a trade or business for United

States federal income Tax purposes and agree that no portion of the consideration shall be treated in whole or in part as the payment for services or future services.

Section 3.6 Prorations.

(a) Buyer and Seller agree that all of the items normally prorated, including those listed below (but not including Taxes), relating to the Acquired Assets and the Business of the Vero Beach Electric Utility shall be prorated as of the Closing Date to the extent such items are Assumed Liabilities, with Seller liable to the extent such items relate to any time period prior to the Closing Date, and Buyer liable to the extent such items relate to periods commencing with the Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days):

- (i) Assessments and other charges (other than Taxes), if any, relating to the ownership, use or business of the Acquired Assets;
- (ii) Any prepaid expenses (including security deposits) relating to the Acquired Assets, but excluding any Prepaid Expenses payable by Buyer pursuant to Section 3.3(a)(ii);
- (iii) Rent and all other items (including prepaid services or goods not included in Inventory) payable under any of the Assumed Contracts;
- (iv) Any fees, charges or other payments with respect to any Transferable Permit;
- (v) Sewer rents and charges for water, telephone, electricity and other utilities for the Vero Beach Power Plant and substations being acquired hereunder;
- (vi) Fees or charges (other than Taxes) imposed by any Governmental Authority; and
- (vii) Rent and other items (other than Taxes) payable and relating to the Real Property Interests.

(b) In connection with the prorations referred to in (a) above, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual amounts accrued through the Closing Date or paid for the most recent year (or other appropriate period) for which actual amounts paid are available. Such prorated amounts shall be re-prorated and paid to the appropriate Party within sixty (60) days of the date that the previously unavailable actual figures become available. Prorations measured by calendar days shall be based on the number of days in a year or other appropriate period (i) before the Closing Date and (ii) including and after the Closing Date. Seller and Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.6.

(c) To the extent that the proration of an item under this Section 3.6 allocates a portion of such item to a period (or portion thereof) ending before the Closing Date, such portion

shall constitute an Excluded Liability. To the extent that the proration of an item under this Section 3.6 allocates a portion of such item to a period (or portion thereof) ending on or after the Closing Date, such portion shall constitute an Assumed Liability.

Section 3.7 Deliveries by Seller.

At the Closing, Seller will deliver, or cause to be delivered, the following to Buyer:

- (a) Deeds for the Acquired Land In Fee, duly executed by Seller and in recordable form;
- (b) The Assignment of Easements and Other Real Property Interests, each duly executed by Seller and in recordable form;
- (c) The Capital Leases, if any, duly executed by Seller, together with, if any real property is leased pursuant to any such Capital Lease, a related memorandum of such lease duly executed by Seller and in recordable form;
- (d) The Vero Beach Power Plant Site Lease Agreement, duly executed by Seller, together with the related memorandum of such lease, duly executed by Seller and in recordable form;
- (e) The Airport Substations 5 and 6 Lease Agreement, duly executed by Seller, together with the related memorandum of such lease, duly executed by Seller and in recordable form;
- (f) If Buyer exercises the Airport Warehouse Lease Agreement Option, the Airport Warehouse Lease Agreement, duly executed by Seller, together with the related memorandum of such lease duly executed by Seller and in recordable form;
- (g) The District Licenses, each duly executed by the District and Seller and in recordable form;
- (h) The District Sublicenses, each duly executed by Seller and in recordable form;
- (i) Releases or satisfactions of Encumbrances other than Permitted Encumbrances;
- (j) The affidavit, substantially in the form of Exhibit D attached hereto, and such other affidavits, certificates and other documentation as is reasonably required by Buyer's title insurer;
- (k) The Bill of Sale, duly executed by Seller;
- (l) The Assignment and Assumption Agreement, duly executed by Seller;

(m) Copies of any and all Governmental Authority and other third party consents, waivers or approvals obtained by Seller with respect to the transfer of the Acquired Assets to Buyer, or the consummation of the transactions contemplated by this Agreement;

(n) All other Ancillary Agreements, duly executed by Seller, as applicable;

(o) All Seller Ancillary Agreements, duly executed by Seller and the other parties thereto, as applicable;

(p) Copies, certified by the City Clerk of Seller, of evidence of approval by the City Council of the Transaction, the Agreement, the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby (including the execution and delivery hereof and thereof), in the form of a written resolution adopted by the City Council, signed by the Mayor of the Seller and attested to by the City Clerk;

(q) A certificate of the City of Vero Beach Canvassing Board, filed with the City Clerk, evidencing that a majority of the votes cast voted in favor of the Referendum Question, at a referendum, duly called and held by the City of Vero Beach on a date not later than ninety (90) days after the Effective Date;

(r) To the extent available, originals of the Seller Contracts, the Transferred Employee Records and the Transferable Permits and, if not available, true and correct copies thereof, in all cases together with notices to and, if required by the terms thereof, consents by other Persons which are parties to the Assumed Contracts, Real Property Interest Instruments and Transferable Permits;

(s) All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary or desirable to transfer to Buyer Seller's interest in the Acquired Assets, in accordance with this Agreement and where necessary or desirable in recordable form;

(t) Such other agreements, consents, documents, instruments and writings as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or the Ancillary Agreements;

(u) Estoppel certificates, substantially in the form of Exhibit W attached hereto, duly executed by each of the Persons other than Seller which are parties to the Assumed Contracts;

(v) A complete list of Seller Employees as of the Closing Date by name and by position;

(w) All documentation as shall, in the reasonable opinion of Buyer or its counsel, be necessary for Buyer to meet its obligations with respect to Section 6.10 of this Agreement; and

(x) Such affidavits, releases, certificates or other evidence required pursuant to the Buyer's title commitment in a form reasonably satisfactory to the title insurer to delete from such title commitment and final title insurance policy those matters set forth in Schedule 4.7(b) that are not Permitted Encumbrances.

Section 3.8 Deliveries by Buyer.

At the Closing, Buyer will deliver, or cause to be delivered, the following to Seller:

(a) The Purchase Price payable pursuant to Section 3.4(a), as adjusted pursuant to Section 3.3;

(b) The Vero Beach Power Plant Site Lease Agreement, duly executed by Buyer;

(c) The Airport Substations 5 and 6 Lease Agreement, duly executed by Buyer;

(d) If Buyer exercises the Airport Warehouse Lease Agreement Option, the Airport Warehouse Lease Agreement, duly executed by Buyer;

(e) The Capital Leases, if any, duly executed by Buyer;

(f) The District Sublicenses, each duly executed by Buyer;

(g) The Assignment of Easements and Other Real Property Interests, each duly executed by Buyer;

(h) All other Ancillary Agreements, duly executed by Buyer, as applicable;

(i) Copies, certified by the Secretary or any Assistant Secretary of Buyer, of resolutions authorizing the execution and delivery of this Agreement, and all of the agreements and instruments to be executed and delivered by Buyer in connection herewith, and the consummation of the transactions contemplated hereby;

(j) A certificate of the Secretary or any Assistant Secretary of Buyer identifying the name and title and bearing the signatures of the officers of Buyer authorized to execute and deliver this Agreement, and the other agreements contemplated hereby;

(k) A certificate of good standing with respect to Buyer, issued by the Secretary of the State of Florida;

(l) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement; and

(m) Such other agreements, documents, instruments and writings as are required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

Section 4.1 Organization.

Seller is a duly created and validly existing municipal corporation under the Constitution and laws of the State of Florida and has all requisite power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted.

Section 4.2 Authority Relative to this Agreement.

Seller has full power and authority to execute and deliver this Agreement, the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement, the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action required on the part of Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement, the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements or the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby, including authorization of the Mayor of the City to execute contracts and the City Manager to take all other actions on behalf of Seller (including the spending of monies) required for satisfaction of all conditions, covenants and obligations of Seller under the Agreement (including authorization to close the Transaction), the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements and the Ancillary Agreements. This Agreement has been duly and validly executed and delivered by Seller and at Closing, the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements and the Ancillary Agreements will be duly and validly executed and delivered by Seller, and assuming that this Agreement and the applicable Ancillary Agreements constitute valid and binding agreements of Buyer, this Agreement, the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements and the Ancillary Agreements constitute the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

Section 4.3 Consents and Approvals; No Violation

Subject to the receipt of the third-party consents set forth in Schedule 4.3, neither the execution and delivery of this Agreement, the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements or the Ancillary Agreements by Seller nor the consummation by Seller of the transactions contemplated hereby or thereby will (i) conflict with or result in the breach or violation of any provision of the charter or other organizational or governing documents of Seller, or of resolutions of any governing body of Seller; (ii) require any consent or other action by any Person, or result in a default (or give rise to any right of termination, cancellation or

acceleration), under any of the terms, conditions or provisions of any Contract to which Seller is a party or by which Seller or any of the Acquired Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, with respect to Contracts that are not Real Property Interest Instruments, Assumed Contracts, Intellectual Property Licenses or Material Seller Contracts, would not, individually or in the aggregate, have a Material Adverse Effect; (iii) violate any Law of, or applicable to, Seller or any of its assets, which violation, individually or in the aggregate, would create a Material Adverse Effect; or (iv) result in the imposition or creation of an Encumbrance (other than a Permitted Encumbrance) on any of the Acquired Assets.

Section 4.4 Reports.

Seller has filed or caused to be filed with the applicable federal, state and/or local utility commissions or regulatory bodies (including NERC and other national and regional electric reliability organizations), as the case may be, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by Seller with respect to the Acquired Assets or the Business of the Vero Beach Electric Utility under applicable Law. All such filings complied in all material respects with all applicable requirements therefor in effect on the date each such form, statement, report and document was filed.

Section 4.5 Undisclosed Liabilities.

Except as set forth in Schedule 4.5, the Acquired Assets are not subject to any Liability or obligation (whether absolute, accrued, contingent or otherwise) that is not reflected in the "Electric Utility" portion of the City of Vero Beach comprehensive annual financial report for 2011, including the notes thereto, as of September 30, 2011 and other than Liabilities incurred in the ordinary course of the Business of the Vero Beach Electric Utility.

Section 4.6 Absence of Material Adverse Effect.

Since September 30, 2011, except as set forth in Schedule 4.6, there has not been any Material Adverse Effect.

Section 4.7 Real Property, Title and Related Matters.

(a) [Reserved].

(b) Schedule 4.7(b) contains a list of all Encumbrances (other than Permitted Encumbrances) relating to or affecting the Acquired Land In Fee, the Vero Beach Power Plant Site, the Easements and any leasehold interests under any Lease Agreements for which Seller will secure a release or satisfaction before Closing.

(c) The Seller has good and marketable title to each parcel of Acquired Land In Fee, and to Seller's Knowledge for any real property as to which Seller has an option or purchase and sale agreement to acquire and which relates to the Business of the Vero Beach Electric Utility, the optionor or seller has good and marketable title to the real property subject to such option, free and clear of all Encumbrances, except Permitted Encumbrances. Seller has

good and valid title to each Acquired Asset constituting personal property or a fixture free and clear of all Encumbrances, except Permitted Encumbrances. At the Closing, Buyer will receive: (A) with respect to each parcel of Acquired Land In Fee, good and marketable title, free and clear of all Encumbrances, except Permitted Encumbrances; (B) with respect to each Easement, to Seller's Knowledge, good and valid title, free and clear of all Encumbrances, except Permitted Encumbrances; and (C) with respect to each Acquired Asset not constituting Acquired Land In Fee or an Easement, good and valid title, free and clear of all Encumbrances, except Permitted Encumbrances. Except for the FPUA Right of First Refusal, there are no outstanding rights, options, agreements or other commitments giving any Person any current or future right to require the Seller or, following the Closing, the Buyer, to sell or transfer to such Person or to any third Person any interest in any of the Acquired Assets.

(d) Except for the real property that is the subject of the Airport Property Lease Agreements, Seller does not lease any Real Property. Seller has a valid and subsisting leasehold interest in, and the right to quiet enjoyment of, the real property that is the subject of the Airport Property Lease Agreements for the full term of the applicable lease, free and clear of all Encumbrances other than Permitted Encumbrances. To the Knowledge of Seller, Seller has a valid and subsisting easement interest in, and the right to quiet enjoyment of, any parcel of the real property under easement by Seller for the full term of the applicable easement, free and clear of all Encumbrances other than Permitted Encumbrances. To the Knowledge of Seller, Seller has a valid and subsisting real property interest in, under and to any Other Real Property Interests instrument for the full term of the applicable instrument, free and clear of all Encumbrances other than Permitted Encumbrances. There have been no oral leases or oral amendments to any such lease.

(e) Each Real Property Interest Instrument with respect to any Acquired Land In Fee or with respect to real property that is the subject of any Lease Agreement is in full force and effect and constitutes a legal, valid and binding obligation of Seller and enforceable against Seller and, to Seller's knowledge, constitutes a legal, valid and binding obligation of the other parties thereto and enforceable against the other parties thereto. For Real Property Interests Instruments other than those relating to the Acquired Land in Fee and the Lease Agreements, to the Knowledge of Seller, each Real Property Interest Instrument with respect to any such Real Property Interest is in full force and effect and constitutes a legal, valid and binding obligation of Seller and enforceable against Seller and constitutes a legal, valid and binding obligation of the other parties thereto and enforceable against the other parties thereto.

(f) There is not, under any Real Property Interest Instrument with respect to any Acquired Land In Fee or with respect to real property that is the subject of any Lease Agreement, any material breach, violation or default (or any condition or event which, with notice or lapse of time or both, would constitute a default on the part of Seller, or to the Knowledge of Seller, on the part of any of the parties thereto). For Real Property Interest Instruments other than those relating to the Acquired Land in Fee and the Lease Agreements, to the Knowledge of Seller, there is not, under any such Real Property Interest Instrument with respect to any Real Property Interest, any material breach, violation or default (or any condition or event which, with notice or lapse of time or both, would constitute a default on the part of Seller, or to the Knowledge of Seller, on the part of any of the parties thereto).

(g) Except for the Real Property Interest Instruments, the MOU, the Seller Executed Ancillary Agreements and any other instruments identified in Schedule 4.7(b), to the Knowledge of Seller, there are no written or oral agreements between Seller and any other party regarding (i) the matters set forth in, or the transactions contemplated by, the Real Property Interest Instruments, the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements or the Ancillary Agreements or (ii) the Real Property or the Real Property Interests.

(h) Each Real Property Interest Instrument with respect to any Acquired Land In Fee and with respect to real property that is the subject of any Lease Agreement has been properly recorded, or a memorandum of such Real Property Interest Instrument has been properly recorded, in accordance with applicable Laws.

(i) To Seller's knowledge, each parcel of Real Property has not been abandoned by Seller and is in the possession or under the control of Seller.

(j) To Seller's Knowledge, there are no other third party real property interests or permitted uses which conflict in any material manner with the operation or maintenance of the Acquired Assets or the Business of the Vero Beach Electric Utility with respect to any of the Real Property Interests.

(k) [Reserved]

(l) All Real Property and Real Property Interests with respect to any Acquired Land In Fee or any Lease Agreement comply with all existing subdivision, land use and zoning ordinances, regulations and restrictions, and to Seller's knowledge, there is no Action pending by any Governmental Authority threatened against or affecting any Acquired Assets or any Real Property before any Governmental Authority. For Real Property Interests other than those relating to the Acquired Land in Fee and the Lease Agreements, to the Knowledge of Seller, all such Real Property and Real Property Interests comply with all existing subdivision, land use and zoning ordinances, regulations and restrictions, and there is no Action pending by any Governmental Authority, or to Seller's Knowledge, threatened against or affecting any such Real Property Interests before any Governmental Authority.

(m) There exist no outstanding covenants or agreements in connection with the zoning of the Real Property (or any portion thereof) relating to any Acquired Land In Fee or any Lease Agreement which would bind or require Buyer to perform any actions or pay any monies in connection therewith. To Seller's knowledge, there exist no outstanding covenants or agreements in connection with the zoning of the Real Property or any portion thereof (other than those relating to any Acquired Land In Fee or any Lease Agreement) which would bind or require Buyer to perform any actions or pay any monies in connection therewith

(n) Seller has delivered to Buyer prior to the Effective Date true and complete copies of all deeds, easements, leases, licenses, Permits, crossing agreements, right of entry agreements, mortgages, deeds of trust, site access agreements, certificates of occupancy, title insurance policies, updated title commitments or reports, and surveys and similar documents and amendments thereto which, after a complete and thorough review of Seller's records, are in Seller's possession relating to any Real Property Interests.

- (o) [Reserved]
- (p) Seller has not received written notice, and Seller does not have any Knowledge of:
 - (i) except as disclosed in Schedule 4.7(p)(i), any pending or threatened proceedings in eminent domain, for rezoning or otherwise, which would affect any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset;
 - (ii) except as disclosed in Schedule 4.7(p)(ii), any pending or threatened public improvements or special assessments or Encumbrances by any Governmental Authority and/or violations that could reasonably be expected to result in any charge being levied or assumed or in the creation of any Encumbrance, that could reasonably be expected to affect any Real Property Interest, any Real Property, or any portion thereof or any improvement thereon that is an Acquired Asset;
 - (iii) except as disclosed in Schedule 4.7(p)(iii), any plan, study or effort by any Governmental Authority to widen, modify or realign any street or road in which any Acquired Assets are located, or providing access to the Real Property or any portion thereof, or that in any other way could reasonably be expected to materially affect Seller's current or intended use thereof;
 - (iv) any violations on the Real Property or any portion thereof of any covenants, conditions or restrictions applicable thereto or of any term or provision of any Real Property Interest Instrument;
 - (v) except for the Permitted Encumbrances, (i) Acquired Assets located on any Real Property encroaching onto adjoining lands, any easements, or other interests in favor of third parties, or (ii) any third party structures or improvements encroaching on portions of the Real Property occupied by Acquired Assets;
 - (vi) any material inaccuracies or omissions in any survey, map, plan, preliminary report or title policy, provided in final form, delivered to Buyer by or on behalf of Seller; or
 - (vii) except as disclosed in Schedule 4.7(p)(vii), (A) any mining, mineral or water extraction or development projects in progress or planned to commence on or under any Real Property or any portion thereof or (B) defects or conditions of the soil or land, including but not limited to any wetlands, which could reasonably be expected to impair the use of any Real Property Interests, any Real Property or any improvements thereon that are Acquired Assets.
- (q) Except for amounts payable or receivable as set forth in Schedule 4.7(q) or as set forth in any Lease Agreement, there are no other rents, fees, royalties, water or sewer charges, taxes or assessments or other amounts payable or receivable by Seller or Buyer in connection with any Real Property Interest or Real Property or any tenancies, licenses,

occupancies or co-tenancies related to any Real Property Interests, any Real Property or any improvements thereon that are Acquired Assets.

(r) No Real Property Interest or Real Property (or any portion thereof) relating to any Acquired Land In Fee or any Lease Agreement or any improvement thereon that is an Acquired Asset, or the uses conducted thereon, violate any Law or Order. To Seller's knowledge, no Real Property Interest or Real Property (or any portion thereof) other than those relating to the Acquired Land in Fee and the Lease Agreements or any improvement thereon that is an Acquired Asset, or the uses conducted thereon, violate any Law or Order.

(s) Except for instruments constituting Permitted Encumbrances, the Lease Agreements and the Real Property Interests, there are no commitments or agreements with any Governmental Authority or public or private utility affecting any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset, Acquired Land In Fee or leasehold interests that are Real Property Interests, that are not disclosed in this Agreement. For Real Property Interests other than those relating to the Acquired Land in Fee and the Lease Agreements, except for the Permitted Encumbrances, the Lease Agreements and the Real Property Interests, to the Knowledge of Seller, there are no commitments or agreements with any Governmental Authority or public or private utility affecting any such Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset.

(t) Except for Permitted Encumbrances, or as disclosed in Schedule 4.7(t), there are no Encumbrances, covenants, conditions, reservations, restrictions, easements or other matters affecting any Acquired Land In Fee or leasehold interests that are Real Property Interests. For Real Property Interests other than those relating to the Acquired Land in Fee and the Lease Agreements, except for Permitted Encumbrances, or as disclosed in Schedule 4.7(t), to the Knowledge of Seller, there are no Encumbrances, covenants, conditions, reservations, restrictions, easements or other matters affecting any such Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset.

(u) Except as disclosed in Schedule 4.7(u), to Seller's Knowledge, there are no other facts or conditions relating to any Real Property Interest, any Real Property or any portion thereof, or any improvement thereon, that could have a Material Adverse Effect.

(v) Schedule 4.7(v) contains a true and correct list of all mortgages, deeds of trusts and other agreements or instruments creating a security interest in any Real Property Interest, any Real Property or any portion thereof or any improvement thereon that is an Acquired Asset.

Section 4.8 Operability; Condition of the Vero Beach Electric Utility; Sufficiency of Real Property Interests.

(a) The Acquired Assets constitute all of the assets, property and rights used in, or necessary for, the Business of the Vero Beach Electric Utility in the manner in which it has been operated since January 1, 2011, and, except as disclosed in Schedule 4.8, the Acquired

Assets are currently in conditions sufficient to operate the Vero Beach Electric Utility at its full capacity.

(b) Except as set forth in the Capital Expenditure and Maintenance Plan and taking into account the Vero Beach Power Plant Expectation, no Acquired Asset is in need of any repair or replacement that either (i) is known to Seller or (ii) would be disclosed by visual inspection or Seller's Past Practices.

(c) As of the Closing Date and immediately after giving effect to the consummation of the transactions contemplated by this Agreement, Buyer will have acquired all of Seller's interest in Seller's Long Term Real Property Interests with respect to each parcel of real property (i) on which the Acquired Assets are located or (ii) that is used in or necessary for (A) the Business of the Vero Beach Electric Utility or (B) the operation or maintenance of the Acquired Assets.

Section 4.9 Insurance.

Schedule 4.9 sets forth all material policies of property damage, fire, liability, worker's compensation and other forms of insurance relating to the Acquired Assets. Such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid, and no written notice of cancellation, non-renewal or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. No insurance with respect to the Acquired Assets has been refused nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the past three (3) years, and all required notices have been sent to insurers to preserve all material claims under the aforementioned insurance policies.

Section 4.10 Environmental, Licensing and Governmental Approval Matters.

Except as disclosed in Schedule 4.10:

(a) Seller has obtained and holds all Environmental Permits, each such Environmental Permit is in full force and effect, Seller is in compliance with all of its obligations thereunder, there are no proceedings pending or, to Seller's Knowledge, threatened that would reasonably be expected to result in the revocation, termination, suspension, modification or amendment of any Environmental Permit, and the Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any Environmental Permit which failure would reasonably be expected to result in any Environmental Permit being revoked, terminated, suspended or adversely modified. No Environmental Permit will terminate or be subject to termination or revocation as a result of the transactions contemplated by this Agreement;

(b) (i) The Real Property Interests and Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, and the uses conducted thereon, and the Business of the Vero Beach Electric Utility that is related to the Real Property Interests and Real Property (or any portion thereof) relating to any

Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, and the uses conducted thereon, are in compliance in all material respects with all terms, conditions and provisions of all Environmental Laws and Environmental Permits, (ii) to Seller's Knowledge, the Real Property Interests and Real Property (or any portion thereof) and the Business of the Vero Beach Electric Utility (other than the Real Property Interests and Real Property (or any portion thereof) relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, and the uses conducted thereon, and the Business of the Vero Beach Electric Utility that is related to the Real Property Interests and Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, and the uses conducted thereon), are in compliance in all material respects with all terms, conditions and provisions of all Environmental Laws and Environmental Permits, and (iii) Seller has not received any written notice from any Governmental Authority that the Acquired Assets, the Real Property and the Business of the Vero Beach Utility are not or have not been in compliance with, any Environmental Law or any Environmental Permit;

(c) (i) There are no Environmental Claims pending against Seller or, to Seller's Knowledge, threatened, with respect to any of the Real Property Interests or Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, or the uses conducted thereon, or with respect to the Business of the Vero Beach Electric Utility as it related to the Real Property Interests or Real Property (or any portion thereof) relating to any Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, (ii) to Seller's Knowledge, there are no Environmental Claims pending against Seller or threatened with respect to the Acquired Assets or the Real Property (other than the Real Property (or any portion thereof) relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, or the uses conducted thereon), or with respect to the Business of the Vero Beach Electric Utility (other than as it related to the Real Property (or any portion thereof) relating to any Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset), and (iii) Seller does not have Knowledge of any facts or circumstances which are reasonably likely to form the basis for any Environmental Claim against Seller with respect to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility;

(d) (i) No Releases of Hazardous Substances have occurred (1) at, from, on, or under, and no Hazardous Substances are present on or migrating from, any of the Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, or (2) in the performance of the Business of the Vero Beach Electric Utility as it related to any of the Real Property (or any portion thereof) relating to any Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the

Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, in either case that are reasonably likely to give rise to an Environmental Claim against Seller or require any Remediation, (ii) to Seller's Knowledge, no Releases of Hazardous Substances have occurred (1) at, from, on, or under the Acquired Assets or the Real Property (other than Acquired Assets or Real Property (or any portion thereof) relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset) or (2) in the performance of the Business of the Vero Beach Electric Utility (other than as it related to Acquired Assets or Real Property (or any portion thereof) relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset), (iii) no Hazardous Substances are present on or migrating from any of the Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset that are reasonably likely to give rise to an Environmental Claim against Seller or require any Remediation, and (iv) to Seller's Knowledge, no Hazardous Substances are present on or migrating from the Acquired Assets or the Real Property (other than Acquired Assets and Real Property (or any portion thereof) relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset) that are reasonably likely to give rise to an Environmental Claim against Seller or require any Remediation;

(e) (i) None of the Acquired Assets, the Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset is an Environmental Clean-up Site, and Seller has not transported or arranged for treatment, storage, handling, disposal or transportation of any Hazardous Substances from the Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, or in performance of the Business of the Vero Beach Electric Utility as it related to any Real Property (or any portion thereof) relating to Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, to any location which is an Environmental Clean-up Site, and (ii) to Seller's Knowledge, none of the Acquired Assets, the Real Property or any portion thereof (other than Acquired Assets or Real Property (or any portion thereof) relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset) is an Environmental Clean-up Site, and Seller has not transported or arranged for treatment, storage, handling, disposal or transportation of any Hazardous Substances from the Acquired Assets or the Real Property (other than Acquired Assets or Real Property (or any portion thereof) relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset), or in performance of the Business of the Vero Beach Electric Utility (other than as it related to the Acquired Assets or Real Property (or any portion thereof) relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset), to any location which is an Environmental Clean-up Site;

(f) (i) There are no (1) underground storage tanks, active or abandoned, or (2) polychlorinated-biphenyl-containing equipment, located at, on, or under the Acquired Assets or the Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset and (ii) to Seller's Knowledge, there are no (1) underground storage tanks, active or abandoned, or (2) polychlorinated-biphenyl-containing equipment, located at, on, or under the Acquired Assets or the Real Property (other than Acquired Assets or Real Property (or any portion thereof) relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset);

(g) (i) There are no Encumbrances arising under or pursuant to any Environmental Law with respect to the Acquired Assets or the Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset or relating to the Business of the Vero Beach Electric Utility as it related to any Real Property (or any portion thereof) relating to any Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset, (ii) to Seller' Knowledge, there are no Encumbrances arising under or pursuant to any Environmental Law with respect to the Acquired Assets or the Real Property (other than Acquired Assets or Real Property relating to the Acquired Land in Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset) or relating to the Business of the Vero Beach Electric Utility (other than as it related to any Acquired Assets or Real Property relating to Acquired Land In Fee, the Vero Beach Power Plant Site Lease Agreement or either of the Airport Property Lease Agreements or any improvement thereon that is an Acquired Asset), and (iii) Seller does not have Knowledge of any facts, circumstances or conditions that are reasonably likely to or result in any Encumbrance arising under or pursuant to any Environmental Law with respect to the Acquired Assets or the Real Property or relating to the Business of the Vero Beach Electric Utility;

(h) There have been no environmental audits or assessments with respect to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility by, on behalf of, or which are in the possession of Seller which have not been made available to Buyer prior to the execution of this Agreement; and

(i) There have been no claims by Seller against comprehensive general liability or excess insurance carriers for any Loss resulting from, relating to or arising from Environmental Claims (i) with respect to the Acquired Assets or the Real Property or (ii) relating to the Business of the Vero Beach Electric Utility.

(j) Schedule 4.10(j) sets forth all Environmental Permits.

Section 4.11 Labor Matters.

Schedule 4.11 sets forth all Seller Collective Bargaining Agreements and other written employment agreements that relate to the Seller Employees. True, correct, and complete

copies of Seller Collective Bargaining Agreements and other written employment agreements, including all amendments thereto, have been made available to Buyer as of the date of this Agreement. Each Seller Employee is qualified, licensed, certified or trained, in accordance with applicable government requirements or standards to perform the duties and responsibilities of their current job assignment.

Section 4.12 ERISA; Benefit Plans.

(a) Schedule 4.12(a) lists (as of the date of this Agreement) all Benefit Plans covering any Seller Employee, or maintained, administered or with respect to which contributions are made by Seller in respect of Seller Employees ("**Seller Benefit Plans**"). True, correct, and complete copies of all Seller Benefit Plans, including all amendments thereto have been provided to Buyer.

(b) All Seller Benefit Plans are governmental plans as defined in Section 3(32) of ERISA and Seller Benefits Plans are not subject to ERISA.

(c) Seller has no ERISA Affiliates.

(d) All Seller Benefit Plans are in material compliance with all applicable Laws.

(e) Seller has materially fulfilled its obligations under the funding requirements and filing requirements of all applicable Laws with respect to Seller Benefit Plans as of the Closing Date. No Seller Benefit Plan is a "multiemployer plan" as defined in Section 3(37) of ERISA and Seller has never participated in or made contributions to a multiemployer plan with respect to which any liability remains unsatisfied.

(f) Seller has not made any commitment and will not take any action to establish any new Benefit Plan or modify or amend any Seller Benefit Plan (except as required under applicable Laws), nor has any intention to do so been communicated to any Seller Employees.

Section 4.13 Location of Acquired Assets.

Except as set forth on Schedule 4.13, all of the physical Acquired Assets are located on the Real Property.

Section 4.14 Contracts.

(a) Excluding the Excluded Contracts, Schedule 4.14 sets forth a complete list of the following Seller Contracts (the "**Material Seller Contracts**"):

(i) Contracts for the future purchase, exchange or sale of natural gas, fuel oil or other fuel;

(ii) Contracts for the future purchase, exchange or sale of electricity, energy, capacity or other energy-related products or ancillary services;

(iii) Contracts for the future transportation, storage, parking, loaning, distribution, wheeling, unloading, delivery, balancing, metering or compression of natural gas, fuel oil or other fuel;

(iv) Contracts for the future purchase, exchange, sale or transportation of water;

(v) Contracts for the future transmission of electricity;

(vi) interconnection Contracts;

(vii) Contracts (A) for the sale, transfer or other disposition of any Acquired Asset or (B) that grant a right or option to sell, transfer or otherwise dispose of any Acquired Asset, other than in each case under clause (A) or (B), any Contract entered into in the ordinary course of the Business of the Vero Beach Electric Utility with respect to Acquired Assets with a value of less than \$25,000;

(viii) Contracts for the future receipt by Seller of any Acquired Assets or services requiring payments in excess of \$25,000 for each individual Contract or in the aggregate for Contracts with the same Person;

(ix) Contracts under which it has created, incurred, assumed or guaranteed any outstanding Indebtedness;

(x) Attachment Agreements or any Contract granting the right to use, to attach to or of access to, any portion of the Acquired Assets;

(xi) outstanding futures, swap, collar, put, call, floor, cap, option or other Contracts that have underlying value and payment liability driven by or tied to fluctuations in the price of commodities, including electric power, natural gas, fuel oil, other fuel or securities;

(xii) Contracts that purport to limit Seller's freedom to compete in any line of business or in any geographic area or contain any exclusivity, most-favored nation or similar covenant; and

(xiii) (A) operation, maintenance or management Contracts, (B) water or wastewater supply, treatment or transportation Contracts or (C) Contracts relating to the purchase or sale of air pollutant emission allowances or credits.

(b) Excluding the Excluded Contracts, the Real Property Interest Instruments, the Assumed Contracts and the Intellectual Property Licenses and the Contracts listed on Schedule 4.14, Seller is not, as of the date of this Agreement, a party to any Contract that is material to the ownership or operation of the Acquired Assets or that is material to the Business of the Vero Beach Electric Utility.

(c) Each Seller Executed Ancillary Agreement, Assumed Contract, Intellectual Property License and Material Seller Contract is in full force and effect and constitutes a legal,

valid and binding obligation of Seller and enforceable against Seller and, to the Knowledge of Seller, constitutes a legal, valid and binding obligation of the other parties thereto and enforceable against the other parties thereto.

(d) There is not, under any Seller Executed Ancillary Agreement, Assumed Contract, Intellectual Property License or Material Seller Contract, any breach, violation or default (or any condition or event which, with notice or lapse of time or both, would constitute a default on the part of Seller, or to the Knowledge of Seller, on the part of any of the other parties thereto). To Seller's Knowledge, Seller has not received notice from any other party to any Real Property Interest Instrument, Seller Executed Ancillary Agreement, Assumed Contract, Intellectual Property License or Material Seller Contract that such other party intends to terminate or fail to renew at the end of its term any such Contract, as applicable, or materially reduce the level of any goods or services to be provided under any such Contract.

Section 4.15 Legal Proceedings, etc.

Except as described in Schedule 4.15, there is no claim or Action pending or, to Seller's Knowledge, threatened against (i) Seller that seeks to enjoin, prohibit, restrain or make illegal the performance of this Agreement, the Seller Ancillary Agreements, the Seller Executed Ancillary Agreements or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby or (ii) or affecting any of the Acquired Assets or the Business of the Vero Beach Electric Utility. Seller is not subject to any outstanding Order affecting any of the Acquired Assets or the Business of the Vero Beach Electric Utility.

Section 4.16 Non-Environmental Permits; Compliance with Law.

(a) Seller has obtained and holds all Non-Environmental Permits, each such Non-Environmental Permit is in full force and effect, Seller is in compliance with all of its obligations thereunder, there are no proceedings pending or, to Seller's Knowledge, threatened that would reasonably be expected to result in the revocation, termination, suspension, modification or amendment of any Non-Environmental Permit, and the Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any Non-Environmental Permit which failure would reasonably be expected to result in any Non-Environmental Permit being revoked, terminated, suspended or adversely modified. No Non-Environmental Permit will terminate or be subject to termination or revocation as a result of the transactions contemplated by this Agreement. The Acquired Assets, the Real Property and the Business of the Vero Beach Electric Utility are in compliance in all material respects with all terms, conditions and provisions of all Laws and Non-Environmental Permits, and Seller has not received any written notice from any Governmental Authority that they are not or have not been in compliance with, any Law or any Non-Environmental Permit. Seller is in compliance with all Non-Environmental Permits and all Laws applicable to the Acquired Assets, the Real Property or the Business of the Vero Beach Electric Utility.

(b) Schedule 4.16(b) sets forth all Non-Environmental Permits.

Section 4.17 Regulation as a Utility.

Seller is an electric utility within the meaning of Florida Statutes Section 366.02. Except with respect to local tax and zoning laws, Seller is not, as a result of its ownership or operation of the Acquired Assets or the Business of the Vero Beach Electric Utility, subject to regulation as a public utility or public service company (or similar designation) by any federal agency or state of the United States other than Florida, or any municipality or any political subdivision of the foregoing.

Section 4.18 Tax Matters

Except as set forth on Schedule 4.18, with respect to the Acquired Assets or the Business of the Vero Beach Electric Utility, (i) all Tax Returns of Seller, if any, required to be filed for taxable periods ending on or prior to the Closing Date have been timely filed, and all such Tax Returns are complete and accurate in all material respects, and (ii) Seller is not liable to pay, collect, withhold, or remit any Taxes (including any Taxes in connection with the transactions contemplated by this Agreement) with respect to the Acquired Assets or the Business of the Vero Beach Electric Utility, and has not received any notice from any Governmental Authority asserting any claim for Taxes.

Section 4.19 Intellectual Property.

Except as set forth in Schedule 4.19, Seller has ownership of, or a license to use, all of the Intellectual Property used in, or necessary for, the operation of the Acquired Assets or for the Business of the Vero Beach Electric Utility as conducted prior to the Effective Date and as conducted prior to the Closing Date. Except as set forth in Schedule 4.19 and pursuant to the transfer to Buyer of the Owned Intellectual Property and the other Acquired Assets on the Closing Date and assignment to Buyer of the Intellectual Property Licenses on the Closing Date, Buyer will have ownership of, or a license to use, all of the Intellectual Property used in or necessary for (a) the operation of the Acquired Assets or (b) the Business of the Vero Beach Electric Utility, in each case under clause (a) or (b), as conducted prior to the Effective Date and as conducted prior to the Closing Date. The rights of Seller in (i) Owned Intellectual Property are freely transferable to Buyer and (ii) the Intellectual Property Licenses are freely assignable to Buyer. Except as set forth in Schedule 4.19, Seller has not received written notice of any claims or demands of any other Person pertaining to any of the Owned Intellectual Property or the Licensed Intellectual Property and no Action has been instituted, or is pending or, to Seller's Knowledge, threatened, which challenge the rights of Seller in respect thereof. Seller has not granted any rights to any Person in respect of any Owned Intellectual Property or Licensed Intellectual Property. None of the Acquired Assets (including the Owned Intellectual Property) or the Licensed Intellectual Property infringes any Intellectual Property of any Person. Seller is not infringing or making any unauthorized disclosure or use of any Intellectual Property of any Person, including without limitation, of any former employer of any past or present Seller Employee, in its activities related to the Business of the Vero Beach Electric Utility or in performing its obligations under this Agreement.

Section 4.20 [Reserved]

Section 4.21 Service Territory.

The Delivery Point for each Person purchasing electricity from Seller is located within the Service Territory.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants with respect to itself to Seller as follows:

Section 5.1 Organization; Qualification.

Buyer is a corporation duly formed, validly existing and in good standing under the laws of the State of Florida. Buyer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. Buyer has heretofore delivered to Seller complete and correct copies of its articles of incorporation and bylaws as currently in effect.

Section 5.2 Authority Relative to This Agreement

Buyer has full corporate power and authority to execute and deliver this Agreement, the OUC-FPL PPAs, the Reliability Call Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby or thereby. The execution and delivery of this Agreement, the OUC-FPL PPAs, the Reliability Call Agreement and the Ancillary Agreement and the consummation of the transactions contemplated hereby or thereby, will have been duly and validly authorized by all necessary corporate action required on the part of Buyer following approval after the Effective Date by each of the respective boards of directors of Buyer and its sole shareholder, NextEra Energy, Inc. (which approvals may be withheld in each of such boards' sole discretion), and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement, the OUC-FPL PPAs, the Reliability Call Agreement and the Ancillary Agreements or to consummate the transactions contemplated hereby or thereby. Following approval after the Effective Date by the respective boards of directors of Buyer and its sole shareholder, NextEra Energy, Inc., this Agreement will have been duly and validly executed and delivered by Buyer, and assuming that this Agreement constitutes a valid and binding agreement of Seller, will constitute a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

Section 5.3 Consents and Approvals; No Violation.

(a) Subject to the receipt of the third-party consents set forth in Schedule 5.3(a) and the Buyer's Required Regulatory Approvals and the approvals by the respective boards of directors of Buyer and its sole shareholder, NextEra Energy, Inc., neither the execution and

delivery of this Agreement, the OUC-FPL PPAs, the Reliability Call Agreement and the Ancillary Agreements by Buyer nor the consummation by Buyer of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of the articles of incorporation and bylaws of Buyer, (ii) require any consent or other action by an Person, or result in a default (or give rise to any right of termination, cancellation or acceleration), under any of the terms, conditions or provisions of any Contract to which Buyer is a party or by which Buyer or any of its assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have Material Adverse Effect, or (iii) violate any Laws applicable to Buyer, which violations, individually or in the aggregate, would create a Material Adverse Effect.

(b) Except as set forth in Schedule 5.3(b) (the Permits referred to in such Schedule are collectively referred to as the "**Buyer's Required Regulatory Approvals**"), no Permit is necessary for the consummation by Buyer of the transactions contemplated hereby. Buyer has no Knowledge of any facts or circumstances that make it reasonably likely that Buyer's Required Regulatory Approvals will not be obtained.

Section 5.4 Availability of Funds.

Buyer currently has sufficient funds available to it through corporate funds, credit facilities and access to capital markets to provide sufficient funds to pay the Purchase Price on the Closing Date and to enable Buyer to timely perform all of its obligations under this Agreement.

Section 5.5 Legal Proceedings.

Except as set forth in Schedule 5.5, there are no claims or Actions pending or, to Buyer's Knowledge, threatened against (i) Buyer that seek to enjoin, prohibit, restrain or make illegal the performance of this Agreement, the Reliability Call Agreement or any of the OUC-FPL PPAs or Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

Section 5.6 Certain Agreements.

The form of agreement attached as Exhibit K hereto is Buyer's form of pole attachment agreement with Governmental Authorities that is applicable on the Effective Date. The form of agreement attached as Exhibit J hereto is Buyer's form of street lighting agreement that is applicable on the Effective Date.

ARTICLE VI COVENANTS OF THE PARTIES

Section 6.1 Conduct of Business Relating to the Acquired Assets.

(a) Seller retains the exclusive responsibility for safe operation of the Vero Beach Electric Utility until the Closing, and nothing in this Agreement shall in any way alter the Seller's duties or obligations under any Law or Permit. Except as described in Schedule 6.1(a), during the period from the Effective Date to the Closing Date (the "**Interim Period**"), Seller shall (i) operate and maintain the Acquired Assets in the ordinary course consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan and conduct the Business of the Vero Beach Electric Utility in the ordinary course consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan, (ii) use Commercially Reasonable Efforts to preserve and protect in all material respects the Acquired Assets, taking into account the Vero Beach Power Plant Expectations, (iii) maintain the Transferable Permits and (iv) comply with all applicable Laws and Permits relating to the Acquired Assets or the Business of the Vero Beach Electric Utility. Without limiting the generality of the foregoing, and, except as contemplated in this Agreement or as described in Schedule 6.1(a), during the Interim Period, without the prior written consent of Buyer (unless such consent would be prohibited by Law), Seller shall not do any of the following with respect to the Acquired Assets:

(i) sell, transfer, remove, assign, convey, distribute or otherwise dispose of, any Acquired Assets unless such action is consistent with the Capital Expenditure and Maintenance Plan; provided, that, if capital expenditures and/or maintenance with respect to a specific Acquired Asset is not covered in the Capital Expenditure and Maintenance Plan, such Acquired Asset may be sold, transferred, removed, assigned, conveyed, distributed or otherwise disposed of in the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices;

(ii) except for Permitted Encumbrances (including amendments and/or replacements to the Permitted Encumbrances), create, permit or allow any Encumbrances to be imposed on or against any of the Acquired Assets;

(iii) grant any waiver of any material term under, exercise any material option under, or give any material consent with respect to any Real Property Interest Instrument, Seller Executed Ancillary Agreement, Assumed Contract, Intellectual Property License or Material Seller Contract, including waiving any material default by, or release, settle or compromise any material claim against, any other party thereto;

(iv) enter into, amend or voluntarily terminate prior to the expiration date thereof (i) any Real Property Interest Instrument, Seller Executed Ancillary Agreement, Assumed Contract, Intellectual Property License or Transferable Permit or (ii) any Material Seller Contract (other than Contracts that will be fully performed prior to Closing and that are entered into in the ordinary course of the Business of the Vero Beach Electric Utility consistent

with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan);

(v) amend in any material respect or cancel any property, liability or casualty insurance policies related to the Acquired Assets or the Business of the Vero Beach Electric Utility, or fail to maintain such insurance policies with current insurance companies who have issued such policies, their successors, or other financially responsible insurance companies in such amounts and against such risks and losses as are customary for such assets and businesses consistent with Seller's Past Practices;

(vi) except as required by any Law or accounting principles generally accepted in the United States, change, in any material respect, its Tax practice or policy (including making new Tax elections or changing Tax elections and settling Tax controversies not in the ordinary course of the Business of the Vero Beach Electric Utility) to the extent such change or settlement would be binding on Buyer;

(vii) take any action, fail to take any action, or enter into any transaction through the Closing that will result or may reasonably be anticipated to result in any misrepresentation or breach of any warranty of Seller hereunder as of the Closing Date;

(viii) settle any claim or Action that results in any obligation imposed on the Acquired Assets that could reasonably be likely to continue past the Closing Date;

(ix) (a) hire any individual (other than to replace any Seller Employee who may have resigned or have been terminated); or (b) increase the compensation or benefits payable to any Seller Employee, except as required under Seller Collective Bargaining Agreements;

(x) enter into or amend any Contract that (A) binds Buyer to adopt and/or implement the terms of any Seller Collective Bargaining Agreement (or any portion thereof) or (B) obligates Buyer to treat with or recognize any union; or

(xi) agree or commit to do any of the foregoing.

(b) During the Interim Period, in the interest of cooperation between Seller and Buyer and to perform diligence on the transactions contemplated hereunder (including the representations and warranties of Seller hereunder) and to plan for and facilitate an orderly and seamless transition from Seller to Buyer on the Closing Date of ownership and operation of the Acquired Assets and the Business of the Vero Beach Electric Utility, the Parties agree that at the sole expense of Buyer, and subject to compliance with all applicable Laws and Permits, Seller will permit designated Representatives of Buyer ("**Observers**") to observe any and all aspects of the Business of the Vero Beach Electric Utility, and such observation will be permitted on a cooperative basis in the presence of one or more individuals designated by Seller (the "**Seller's Agent(s)**"); provided, however, that such Observers and their actions shall not interfere with the Business of the Vero Beach Electric Utility. Seller shall use Commercially Reasonable Efforts to provide to the Observers interim furnished office space and utilities at the Vero Beach Power Plant and Seller's T&D center, as reasonably necessary to allow Buyer to conduct its efforts

through the Closing Date; provided that Buyer shall be responsible for all of its costs relating thereto.

Section 6.2 Access to Information; Reporting.

(a) In addition to the rights granted by Sections 6.1(b), during the Interim Period, in the interest of cooperation between Seller and Buyer and to perform diligence on the transactions contemplated hereunder (including the representations and warranties of Seller hereunder) and to plan for and facilitate an orderly and seamless transition from Seller to Buyer on the Closing Date of ownership and operation of the Acquired Assets and the Business of the Vero Beach Electric Utility, Seller will (i) give Buyer and Buyer's Representatives reasonable access to (x) all management personnel engaged in the Business of the Vero Beach Electric Utility, (y) all books, documents, records and information (including financial and operating data and Permits, reports, schedules or other documents filed with or received from any Governmental Authority) relating to the Acquired Assets or the Business of the Vero Beach Electric Utility and furnish copies thereof as Buyer may from time to time reasonably request (z) all offices and other facilities and properties constituting the Acquired Assets or used in the Business of the Vero Beach Electric Utility; and (ii) permit Buyer and Buyer's Representatives to make such reasonable inspections thereof as Buyer may reasonably request; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the Business of the Vero Beach Electric Utility and (B) Seller need not supply Buyer with any information that Seller is legally prohibited from supplying.

(b) During the Interim Period, promptly after obtaining Knowledge thereof, Seller shall notify Buyer in writing of, (i) any fact, event, circumstance or condition that would reasonably be expected to have a Material Adverse Effect, (ii) any material unanticipated maintenance or repair of any of the Acquired Assets, (iii) any material emergency condition affecting, or material unscheduled interruption of, the operation of any of the Acquired Assets or the Business of the Vero Beach Electric Utility, or (iv) any receipt of a notice of a violation of any Law or Permit relating to the Acquired Assets or the Business of the Vero Beach Electric Utility.

(c) Within thirty (30) days after the Effective Date, Seller shall provide to Buyer true, complete and un-redacted copies of all Assumed Contracts, Intellectual Property Licenses, Transferable Permits and Material Seller Contracts and Seller shall provide an update thereto between sixty (60) and ninety (90) days prior to Closing.

Section 6.3 Expenses.

Except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including the cost of legal, technical and financial consultants, shall be borne by the Party incurring such costs and expenses; provided, however, that Buyer will bear the cost of filing for and prosecuting applications for Buyer's Required Regulatory Approvals.

Section 6.4 Further Assurances; Cooperation

(a) Subject to the terms and conditions of this Agreement, each of the Parties hereto will take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the sale, transfer, conveyance, assignment and delivery of the Acquired Assets and the assignment of the Assumed Liabilities and the exclusion of the Excluded Liabilities pursuant to this Agreement, including, without limitation, ensuring satisfaction of the conditions precedent to each Party's obligations hereunder, including, without limitation, all regulatory approvals. To the extent that authorized representatives of the Parties determine that the implementation of any covenant or obligation under this Agreement of a Party is not consistent with, or may be likely to impede, the satisfaction of the conditions precedent to a Party's obligations hereunder, including, without limitation, obtaining all regulatory approvals, the Parties may by mutual written agreement (but without need for any amendment of this Agreement) agree to take alternative actions that the Parties determine are necessary or desirable to ensure satisfaction of the conditions precedent to each Party's obligations hereunder or to otherwise ensure consummation of the transactions contemplated by this Agreement. Neither Buyer nor Seller will, without the prior written consent of the other, advocate or take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement or which could reasonably be expected to cause, or to contribute to causing, the other to receive less favorable regulatory treatment than that sought by the other.

(b) From time to time after the Closing Date, Seller will execute and deliver such documents to Buyer as Buyer may reasonably request, at Buyer's expense, in order to more effectively consummate the sale and purchase, including the transfer, conveyance and assignment, of the Acquired Assets or to more effectively vest in Buyer such title to the Acquired Assets (or such rights to use, with respect to Acquired Assets not owned by Seller), as is provided for in Section 4.7, subject to the Permitted Encumbrances. From time to time after the Closing Date, without further consideration, Buyer will, at its own expense, execute and deliver such documents to Seller as Seller may reasonably request in order to evidence Buyer's assumption of the Assumed Liabilities.

(c) Without limiting the generality of the foregoing, and without limiting any of the other assets to be transferred hereunder, Seller, in consideration of payment of the Purchase Price and without further consideration, will make available to Buyer all of Seller's rights under any real property, easement, right of way, permit, lease, license or franchise (collectively, the "**Rights of Way**") reasonably necessary for the Business of the Vero Beach Electric Utility or the operation or maintenance of the Acquired Assets by Buyer after the Closing Date. If any claim is made challenging Buyer's entitlement to such Rights of Way, at Buyer's option, Seller shall cooperate with Buyer, at Buyer's expense to the extent that any payments are required to be made to any third parties in connection therewith, to make available an alternative Right of Way reasonably adequate and acceptable to Buyer.

(d) Seller and Buyer agree to fully support execution of the District Licenses and the District Sublicenses in the forms attached hereto as Exhibits P and Q during the approval process thereof by the District. If the District does not approve one or more provisions of the District Licenses or the District Sublicenses in the forms attached hereto in Exhibits P and Q,

then the Parties agree to negotiate in good faith to finalize and obtain approval from the District of revised terms for each unacceptable provision and each other provision affected thereby (but not any of the other provisions) that will give effect, to the fullest extent possible, to the original intention of the Parties as reflected in Exhibits P and Q.

(e) Seller and Buyer agree to fully support execution of the Dark Fiber License Agreement in the form attached hereto as Exhibit L-1 during the approval process thereof by Indian River County and the School District of Indian River County. If Indian River County or the School District of Indian River County does not approve one or more provisions of the Dark Fiber License Agreement in the form attached hereto in Exhibit L-1, then the Parties agree to negotiate in good faith to finalize and obtain approval from Indian River County and the School District of Indian River County of revised terms for each unacceptable provision and each other provision affected thereby (but not any of the other provisions) that will give effect, to the fullest extent possible, to the original intention of the Parties as reflected in Exhibit L-1.

(f) Seller and Buyer agree to fully support execution of the Airport Substations 5 and 6 Lease Agreement in the form attached hereto as Exhibit I-1 during the approval process thereof, if any, by the FAA, including rent as set forth in the definition of "Airport Substations 5 and 6 Lease Agreement". If FAA approval of the Airport Substations 5 and 6 Lease Agreement is required by applicable Law or by the provisions of any applicable contract with or grant from the FAA and the FAA does not approve one or more provisions of the Airport Substations 5 and 6 Lease Agreement in the form attached hereto in Exhibit I-1, then the Parties agree to negotiate in good faith to finalize and obtain approval from the FAA of revised terms for each unacceptable provision and each other provision affected thereby (but not any of the other provisions) that will give effect, to the fullest extent possible, to the original intention of the Parties as reflected in Exhibit I-1.

(g) Seller and Buyer agree to fully support execution of the Airport Warehouse Lease Agreement in the form attached hereto as Exhibit I-2 during the approval process thereof, if any, by the FAA, including rent as set forth in Section 2.6. If Buyer exercises the Airport Warehouse Lease Agreement Option and if FAA approval of the Airport Substations 5 and 6 Lease Agreement is required by applicable Law or by the provisions of any applicable contract with or grant from the FAA and the FAA does not approve one or more provisions (including rent as set forth in Section 2.6) of the Airport Warehouse Lease Agreement in the form attached hereto in Exhibit I-2, then the Parties agree to negotiate in good faith to finalize and obtain approval from the FAA of revised terms for each unacceptable provision and each other provision affected thereby (but not any of the other provisions) that will give effect, to the fullest extent possible, to the original intention of the Parties as reflected in Exhibit I-2.

Section 6.5 Public Statements.

(a) Any document submitted by a Party to the other under this Agreement or during the negotiation of this Agreement or any Ancillary Agreements ("Public Document") will be a public record (as defined in Section 119.011, Florida Statutes) and may be open for inspection or copying by any person or entity except to the extent such document or certain information included in such document is exempted under Chapter 119, Florida Statutes. Buyer may claim that certain information included in one or all of the Public Documents is, or has been

treated as, being exempt from disclosure in accordance with Florida law. In the event that Seller is requested or required by legal or regulatory authority to disclose any Public Document, Seller shall within three (3) days notify Buyer of such request or requirement prior to disclosure so that Buyer may seek an appropriate protective order if Buyer believes certain information included in such Public Document is exempt from disclosure under Florida law. To the extent reasonably possible and permissible under Florida law, Seller shall endeavor to provide redacted versions of documents, upon request of Buyer if Seller reasonably agrees with Buyer's assertion that certain information included in such Public Document is exempt from public disclosure under Florida law.

(b) The Parties shall not issue any press release or other public disclosure with respect to this Agreement or the transactions contemplated hereby without first affording the non-disclosing Party the opportunity to review and comment on such press release or public disclosure, except for disclosure made in order to comply with applicable Law or stock exchange rules.

Section 6.6 Consents; Approvals.

(a) [Reserved]

(b) As promptly as practicable after the Effective Date, Buyer and Seller, as applicable, shall make the filings listed on Schedule 6.6(b). In fulfilling their respective obligations under this Section 6.6(b), Buyer and Seller shall each use Commercially Reasonable Efforts to lodge or cause to be lodged any such filings within thirty (30) days after the Effective Date. Prior to any Party's submission of the applications contemplated by this Section 6.6(b), the submitting Party shall provide a draft of such application to the other Parties for review and comment and the submitting Party shall in good faith consider any revisions reasonably requested by the reviewing Parties. Each Party will bear its own costs for the preparation and review of any such filings.

(c) As promptly as practicable after the Effective Date, but no later than thirty (30) days after Seller supplies to Buyer all of the information regarding Seller that is required to be included in the application described in this Section 6.6(c), Buyer shall file with FERC, an application for approval of this transaction under Section 203 of the Federal Power Act. Seller shall promptly provide Buyer any information requested in regards to such application. In fulfilling their respective obligations set forth in this Section 6.6(c), Seller and Buyer shall use their Commercially Reasonable Efforts. Prior to Buyer's submission of such application with FERC, Buyer shall submit such application to Seller for review and comment and Buyer shall consider any revisions reasonably requested by Seller. Seller and Buyer shall respond promptly to all requests from FERC or its staff for additional information regarding such application and use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered by FERC with respect to the application. Buyer shall be solely responsible for the cost of filing this application, any petition(s) for rehearing, or any reapplication(s). Seller shall intervene in the proceeding before FERC and shall support the application. Each Party will bear its own costs of the review of such filings.

(d) Buyer will have primary responsibility for securing approval of the FPSC for: (i) authority under Rule 25-9.044, Florida Administrative Code, to charge Buyer's existing retail electric rates to former Customers of the Vero Beach Electric Utility; (ii) termination of the territorial agreement between Buyer and the Vero Beach Electric Utility; and (iii) any other matters for which approval of the FPSC is determined by Buyer to be necessary or advisable to consummate the transactions contemplated by this Agreement. Prior to Buyer's submission of any application for such approval by the FPSC, Buyer shall submit such application to Seller for review and comment and Buyer shall consider any revisions reasonably requested by Seller. Seller and Buyer shall respond promptly to all requests from the FPSC or its staff for additional information regarding such application and use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered by the FPSC with respect to the application. Buyer shall be solely responsible for the cost of filing this application, any petition(s) for rehearing, or any reapplication(s). Seller shall intervene in any proceeding before the FPSC and shall support the application. Each Party will bear its own costs of the review of such filings.

(e) Seller and Buyer shall cooperate with each other and, as promptly as practicable after the Effective Date, (i) prepare and make with FERC, the Federal Communications Commission or any other Governmental Authority having jurisdiction over Seller, Buyer or the Acquired Assets, all necessary filings required to be made with respect to the transactions contemplated hereby (including those specified above), (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, (iii) use Commercially Reasonable Efforts to obtain the transfer or reissuance to Buyer of all necessary Transferable Permits, and (iv) use Commercially Reasonable Efforts to obtain all necessary consents, approvals and authorizations of all other parties, in the case of each of the foregoing clauses (i), (ii), (iii) and (iv), necessary or advisable to consummate the transactions contemplated by this Agreement (including, without limitation, Buyer's Required Regulatory Approvals). The Parties shall respond promptly to any requests for additional information made by such agencies, use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered with respect to the applications, and use their respective Commercially Reasonable Efforts to cause regulatory approval to be obtained at the earliest possible date after the date of filing. Each Party will bear its own costs of the preparation and review of any such filing. Seller and Buyer shall have the right to review in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing made in connection with the transactions contemplated hereby and the filing Party shall consider in good faith any revisions reasonably requested by the non-filing Party.

(f) Buyer shall have the primary responsibility for securing the transfer, reissuance or procurement of the Transferable Permits effective as of the Closing Date. Seller shall cooperate with Buyer's efforts in this regard and assist in any transfer or reissuance of Transferable Permits held by Seller or the procurement of any other Permit when so requested by Buyer. In the event that Buyer is unable, despite its Commercially Reasonable Efforts, to obtain a transfer or reissuance of one or more of the Transferable Permits as of the Closing Date, Buyer may use the applicable Permit issued to Seller, provided (i) such use is not unlawful, (ii) Buyer notifies Seller prior to the Closing Date, (iii) Buyer continues to make Commercially Reasonable Efforts to obtain a transfer or reissuance of such Permit after the Closing Date, and (iv) Buyer

indemnifies Seller for any losses, claims or penalties suffered by Seller in connection with such Permit that is not transferred or reissued as of the Closing Date resulting from Buyer's ownership or operation of the Acquired Assets following the Closing Date.

Section 6.7 Brokerage Fees and Commissions.

Seller and Buyer each represent and warrant to the other that no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by the Party making such representation. Seller and Buyer will pay to the other or otherwise discharge, and will hold the other harmless from and against, and will pay, reimburse or fully compensate as the primary obligor the other for, any and all claims or liabilities for all brokerage fees, commissions and finder's fees incurred by reason of any action taken by the Party breaching its representation and warranty hereunder.

Section 6.8 Tax Matters.

(a) Seller and Buyer shall each pay any Transfer Taxes imposed on it by Law in connection with this Agreement and the transactions contemplated hereby. Buyer and Seller will file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable Law, will each join in the execution of any such Tax Returns or other documentation.

(b) Buyer shall prepare and timely file all Tax Returns required to be filed after the Closing Date with respect to the Acquired Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Buyer's preparation of any such Tax Returns shall be subject to Seller's approval (not to be unreasonably withheld, delayed or conditioned) to the extent that such Tax Returns include Pre-Closing Taxes for which Seller is responsible pursuant to this Agreement. Buyer shall make such Tax Returns and all schedules and working papers supporting such Tax Returns available for Seller's review and approval no later than thirty (30) Business Days prior to the due date for filing such Tax Return. Seller shall provide Buyer with any comments on the reporting of Pre-Closing Taxes shown in the Tax Return no later than ten (10) Business Days prior to the due date for filing such Tax Return, and Buyer shall incorporate all such comments in the Tax Return unless and to the extent that Buyer determines such comments are incorrect or unreasonable. Subject to Section 6.8(d), not less than five (5) Business Days prior to the due date of any such Tax Return, Seller shall pay to Buyer any Pre-Closing Taxes shown on such Tax Return. Except for matters described in Section 3.5, in the event Buyer and Seller cannot agree as to the preparation or the reporting of any material Pre-Closing Taxes on a Tax Return to be filed by Buyer, the dispute shall be settled in the manner provided by Section 6.8(d) and the cost of such Independent Accounting Firm shall be borne equally by the Parties; provided, that if the Independent Accounting Firm has not made a determination as of the date that such Tax Return is required to be filed, such Tax Return required to be filed by Buyer may be filed by Buyer in a manner consistent with Buyer's position, and such Tax Return required to be filed by Seller may be filed by Seller in a manner consistent with Seller's position; provided, further, that with respect to any such Tax Return that is filed prior to a determination by the Independent Accounting Firm, Seller and Buyer shall take

all commercially reasonable steps to amend such Tax Return, if necessary, to reflect any material determination made by the Independent Accounting Firm.

(c) Each of the Parties shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to Liability for Taxes or effectuating the terms of this Agreement, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Any information obtained pursuant to this Section 6.8(c) or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the Parties hereto, except to the extent such information is required to be disclosed by Law.

(d) Except for matters described in Section 3.5, in the event that a dispute arises between Seller and Buyer as to the preparation or the reporting on a Tax Return to be filed by one Party of any material Tax for which the other Party would be liable pursuant to this Agreement, or as to the allocation of the responsibility for any Tax between Seller and Buyer, the Parties shall attempt in good faith to resolve such dispute, and any agreed amount shall be paid to the appropriate Party within ten (10) Business Days of the date on which the Parties reach agreement. If a dispute is not resolved within thirty (30) days of a Party having provided the other Party written notice of a dispute, the Parties shall submit the dispute for determination and resolution to the Independent Accounting Firm, which shall be instructed to determine and report to the Parties in writing, within thirty (30) days after such submission, upon such disputed amount, and such written report shall be final, conclusive and binding on the Parties. The Independent Accounting Firm shall act as an expert and not as an arbitrator and shall make findings only with respect to the remaining disputes so submitted to it (and not by independent review). Notwithstanding anything in this Agreement to the contrary, the fees and expenses of the Independent Accounting Firm in resolving the dispute shall be borne equally by Buyer and Seller. Any payment required to be made as a result of the resolution of the dispute by the Independent Accounting Firm shall be made within ten (10) days after such resolution, together with any interest determined by the Independent Accounting Firm to be appropriate. Submission of a dispute to the Independent Accounting Firm shall not relieve any Party from any obligation under this Agreement to timely file a Tax Return or pay a Tax.

Section 6.9 Updating Disclosure Schedules.

Prior to the Closing Date, Seller shall promptly (but no later than thirty (30) days after obtaining Knowledge thereof) notify Buyer of any changes or additions to the Schedules required by this Agreement with respect to any matter hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Schedules. No notice made pursuant to this Section shall be deemed to cure any breach of any representation or warranty made in this Agreement unless the Parties agree thereto in writing.

Section 6.10 Employees.

(a) Buyer shall offer employment commencing as of the Closing Date to all Seller Employees whose primary work responsibilities are with respect to the Acquired Assets and who are actively employed as of the Closing Date, which Seller Employees are set forth on Schedule 6.10(a) by position. Notwithstanding the foregoing, Buyer shall not be required to offer employment to any Seller Employees who were previously terminated for cause by Buyer or any of its Affiliates. The Parties shall cooperate in preparation of communications materials applicable to Transferred Employees. Seller agrees to provide to Buyer, within ten (10) days following receipt of a request from Buyer at any time and from time to time during the Interim Period and at Closing, a complete list of Seller Employees by name and by position.

(b) Except as Buyer and any Unrepresented Transferred Employee or Converted Represented Transferred Employee may otherwise mutually agree and subject to Buyer's employee policies and procedures, for the period commencing on the Closing Date and ending twenty-four (24) months thereafter, Buyer shall provide Unrepresented Transferred Employees and Converted Represented Transferred Employees with Total Compensation which in the aggregate is comparable to the Total Compensation provided to similarly situated Buyer's employees. Notwithstanding the foregoing, Unrepresented Transferred Employees and Converted Represented Transferred Employees shall be granted a pension benefit under the Buyer's Retirement Plan (as defined below) as set forth in Section 6.10(f) below.

(c) Except as otherwise negotiated by the Buyer and the Union Representative and subject to any applicable collective bargaining agreement applicable to Buyer's employees and Buyer's employee policies and procedures, for the period commencing on the Closing Date and ending twenty-four (24) months thereafter, Buyer shall provide Represented Transferred Employees and Converted Unrepresented Transferred Employees with employment, Total Compensation and terms and conditions of employment as negotiated with the Union Representative.

(d) As of the Closing Date, all Transferred Employees shall cease to be eligible for active participation in the Seller Benefit Plans and shall commence participation (if applicable eligibility requirements are satisfied) in the Benefit Plans of Buyer, its ERISA Affiliates or, if applicable, the benefit plans negotiated by the Union Representative ("**Buyer Benefit Plans**").

(e) Except as otherwise negotiated by the Buyer and the Union Representative, with respect to Buyer Benefit Plans that are self-funded employee welfare benefit plans as defined in Section 3(1) of ERISA, Buyer shall (i) waive all waiting periods with respect to the Transferred Employees and (ii) provide each Transferred Employee with credit for any co-payments and deductibles for claims incurred during the plan year of the applicable Buyer Benefit Plan in which the Closing Date falls. Seller will use its reasonable best efforts to provide sufficient information to enable Buyer to provide such credits for co-payments and deductibles. To the extent Seller fails to provide such sufficient information, each Transferred Employee shall be responsible for providing written evidence to enable Buyer to provide accurate credit for such co-payments and deductibles.

(f) Except as otherwise negotiated by the Buyer and the Union Representative, all Transferred Employees shall be granted credit for all service with Seller under all Buyer Benefit Plans in which such Transferred Employees become participants for purposes of eligibility, vesting and service related level (except for purposes of qualifying for retiree welfare benefits and benefit accrual under the Buyer Retirement Plan as defined below).

(i) Buyer shall assume the obligation and liability for the Accrued Frozen Pension Benefit (as defined below) for all of the Transferred Employees (the "*Assumed Pension Liability*"). Except as otherwise negotiated by the Buyer and the Union Representative, effective as of the Closing Date, Buyer shall amend its tax-qualified defined benefit plan ("*Buyer Retirement Plan*") to provide each Transferred Employee with a vested benefit equal to a Transferred Employee's accrued benefit under the Seller Defined Benefit Plan as of the Closing Date calculated pursuant to the formula applicable to each such Transferred Employee existing on the Effective Date and counting all service with the Seller for purposes of eligibility, benefit accrual, early retirement or any retirement-type subsidy or ancillary benefit through the Closing Date ("*Accrued Frozen Pension Benefit*") provided that the Accrued Frozen Pension Benefit of any Transferred Employee shall not include any duplication of benefits provided under Seller Defined Benefit Plan. The Accrued Frozen Pension Benefit for each Transferred Employee shall include (i) all optional forms of benefits under the Buyer Retirement Plan and Seller Defined Benefit Plan other than (A) the 10% lump sum option described in Section 6.2(C) of the Seller Defined Benefit Plan, and (B) the distribution of employee contributions as described in Section 7.2 of the Seller Defined Benefit Plan, (ii) a disability benefit corresponding to the disability benefit under Article 8 of the Seller Defined Benefit Plan (if eligible), and (iii) a death benefit corresponding to the death benefit under Article 9 of the Seller Defined Benefit Plan (if eligible). Seller will provide records to Buyer within ninety (90) days following the Closing Date setting forth detailed calculations of each Transferred Employee's Accrued Frozen Pension Benefit under the Seller Defined Benefit Plan as of the Closing Date, and will provide (or ensure that any third party administrator, if applicable, provides) upon Buyer's reasonable request copies of pension calculations for any distributions to Transferred Employees, including distributions of employee contributions under Seller's Defined Benefit Plan, to facilitate the Buyer Retirement Plan administrator to perform appropriate calculations to reflect that no duplication of benefit ensues with regard to the Seller Defined Benefit Plan. For the avoidance of doubt, in the event that a Transferred Employee receives a distribution of employee contributions under the Seller Defined Benefit Plan, pursuant to Section 7.3 of the Seller Defined Benefit Plan, no benefit shall be payable under Buyer's Retirement Plan (other than the benefit attributable to the cash balance formula that accrues prospectively to such Transferred Employee commencing on the Closing Date set forth in subsection (ii) below).

(ii) Effective as of the Closing Date, except as otherwise negotiated by the Buyer and the Union Representative, Transferred Employees prospectively shall accrue pension benefits under the Buyer Retirement Plan cash balance formula on terms and conditions applicable to similarly situated Buyer employees. Notwithstanding the foregoing, effective as of the Closing Date and except as otherwise negotiated by the Buyer and the Union Representative, Transferred Employees will accrue pension credits at the same level as nonbargaining eligible employees of Buyer who have attained at least five years of service.

(g) Seller shall be responsible for extending COBRA continuation coverage, or

its equivalent, to former Seller Employees and qualified beneficiaries of such former Seller Employees who become or became entitled to such COBRA continuation coverage on or before the Closing Date by reason of the occurrence of a qualifying event on or before the Closing Date, including those for whom the Closing Date occurs during their COBRA election period. Buyer shall be responsible for providing COBRA continuation coverage only to Transferred Employees and qualified beneficiaries of Transferred Employees for COBRA qualifying events occurring after the Closing Date.

(h) Seller shall remain responsible for paying Transferred Employees for: (a) all salary, wages, and Seller Benefit Plan benefits (other than the Assumed Pension Liability), and (b) all workers' compensation, disability benefits, or life insurance benefits for which entitlement to payment is based upon events occurring on or prior to the Closing Date including any incurred but unreported claims under the Seller Benefit Plans. Except as otherwise negotiated by the Buyer and the Union Representative, Buyer will assume liability for all floating holidays, sick days, vacation days and personal days of each Transferred Employee that have accrued but remain unused or unpaid by such Transferred Employee as of the Closing Date up to the accrual limits therefor under Buyer's employee policies and procedures for similarly situated employees of Buyer.

(i) Any individual who is otherwise a Transferred Employee but who on the Closing Date is not actively at work due to a leave of absence covered by the Family and Medical Leave Act or similar state or local Law, short-term disability or any other authorized leave of absence and who does not return to active-at-work status within 30 days of Closing, shall remain an employee of Seller and shall not become a Transferred Employee until such time as he or she returns to active-at-work status.

Section 6.11 Risk of Loss; Insurance.

(a) On or prior to the Closing, Buyer shall not bear any risk of loss or damage to the property included in the Acquired Assets. For the avoidance of doubt, the risk of loss or damage to the property included in the Acquired Assets shall not pass to Buyer until the actual time of the Closing, notwithstanding the effective time specified in Section 3.1. Seller shall replace or repair any damage to the Acquired Assets consistent with Seller's Past Practices (taking into account the Vero Beach Power Plant Expectations) and the Capital Expenditure and Maintenance Plan, except as otherwise provided in paragraphs (b) or (c) below.

(b) If, before the Closing, all or any portion of the Acquired Assets is taken by eminent domain or is the subject of a pending taking which has not been consummated, Seller shall notify Buyer promptly in writing of such fact, and Seller shall replace such portion of the Acquired Assets with reasonably comparable assets (such replacement to be reasonably satisfactory to Buyer), taking into account the Vero Beach Power Plant Expectations. If such replacement is not completed by the Closing, the Purchase Price shall be reduced by the amount of the reasonable cost of such replacement. At Seller's election, the Closing Date shall be extended by the time reasonably necessary for such replacement (not to exceed a six (6) months extension), which Closing Date extension shall also extend the Termination Date to the extent the Closing Date would be extended beyond the Termination Date pursuant to this sentence.

(c) If, before the Closing, all or any portion of the Acquired Assets is damaged or destroyed by fire or other casualty, Seller shall notify Buyer promptly in writing of such fact, and Seller shall cure such damage or destruction to a condition reasonably comparable to their prior condition (such cure to be reasonably satisfactory to Buyer), taking into account the Vero Beach Power Plant Expectations. Buyer and Buyer's Representatives shall be entitled to inspect and observe all aspects of such cure. If such cure is not completed by the Closing, the Purchase Price shall be reduced by the reasonable cost to perform such cure. At Seller's election if a notice of intent to terminate has not been given by Seller pursuant to Section 9.1(i), the Closing Date shall be extended by the time reasonably necessary for such cure (not to exceed a six (6) months extension), which Closing Date extension shall also extend the Termination Date to the extent the Closing Date would be extended beyond the Termination Date pursuant to this sentence.

(d) During the Interim Period, Seller shall continue to pay all premiums for insurance policies described in Schedule 4.9, and Seller shall not amend in any material respect or cancel or fail to maintain any such insurance policies with the current insurance companies or their successors or other financially responsible insurance companies in such amounts and against such risks and losses as are currently maintained. Prior to the Closing Date, Seller shall use Commercially Reasonable Efforts to purchase an extended reporting period of at least three (3) years on all claims-made policies included in Schedule 4.9 to allow for the reporting of any claims that may have taken place prior to the Closing Date that have yet to be reported. After the Closing Date, Seller further agrees to cooperate with Buyer concerning any and all incurred but not reported liability claims that may have taken place prior to the Closing Date covered by Seller's insurance as listed in Schedule 4.9, and Seller agrees to cooperate in the resolution of any pending or disputed property damage claims and shall cause their insurers to do the same.

Section 6.12 Assumed Contracts; Ancillary Agreements.

(a) Seller shall obtain any consents required to assign the Assumed Contracts, the Intellectual Property Licenses and the Transferable Permits to Buyer.

(b) At Closing and effective immediately after Closing, Buyer and Seller shall enter into the Ancillary Agreements. At or prior to Closing, Seller shall enter into each of the Seller Ancillary Agreements and shall cause the other parties thereto to enter into the applicable Seller Ancillary Agreements.

Section 6.13 OUC Agreements and FMPA Entitlements.

(a) As promptly as practicable after the Effective Date but no later than the Closing Date, Seller shall, at Seller's sole cost, cause the satisfaction of each of the following conditions precedent to the extent within its control and use reasonable efforts to cause the satisfaction of each of the following conditions precedent to the extent not within its control:

(i) each condition precedent to the termination of the OUC-Vero Beach PPA set forth in the OUC Termination Agreement; and

(ii) each condition precedent to the transfer and assignment to OUC of Seller's power entitlement shares in the Stanton I, Stanton II and St. Lucie II

projects, and assumption by OUC of Seller's post-transfer obligations under the FMPA Agreements (other than the All-Requirements Contract), set forth in the OUC Assignment Agreements and the OUC Transfer Agreements.

(b) [*Reserved*]

(c) As promptly as practicable after the Effective Date but no later than the Closing Date, Seller shall, at Seller's sole cost as reasonably acceptable to Seller, terminate Seller's participation in, and the applicability to Seller of, the All-Requirements Contract as of no later than the Closing Date.

(d) As promptly as practicable after the Effective Date but no later than the Closing Date, Seller shall, at Seller's sole cost as reasonably acceptable to Seller, obtain the written consent of FMPA to the assignment of the FMPA Agreements (other than the All-Requirements Contract) to OUC and other consents of FMPA, if any, necessary for the transfer of the applicable Acquired Assets to Buyer, each in form and substance reasonably satisfactory to Seller and Buyer.

(e) During the Interim Period, (i) Seller shall continue to comply with and satisfy all of its obligations, if any, under each of the FMPA Agreements, the OUC-Vero Beach PPA, the OUC Termination Agreement, the OUC Assignment Agreements and the OUC Transfer Agreements, and Seller shall not cause or permit any Breach by Seller of any of such Contracts and (ii) Buyer shall perform and fulfill its obligations under the OUC-FPL PPAs.

(f) As promptly as practicable after the Effective Date but no later than the Closing Date, Buyer shall, at Buyer's sole cost, cause the satisfaction of each of the following conditions precedent to the extent within its control and use reasonable efforts to cause the satisfaction of each of the following conditions precedent to the extent not within its control:

- (i) each condition precedent to OUC-FPL PPAs; and
- (ii) each condition precedent to the Reliability Call Agreement.

Section 6.14 Separation of Seller Assets.

To the extent that the Acquired Assets need to be severed or separated from other Seller property, assets or rights, Seller shall perform and pay for such severance or separation at Seller's cost not to exceed \$10,000.

Section 6.15 Franchise Ordinance.

Seller shall adopt the Franchise Ordinance by July 31, 2013.

Section 6.16 Capital Expenditure and Maintenance Plan; Spare Parts.

(a) Prior to the Closing Date, Seller agrees to perform the activities described in the Capital Expenditure and Maintenance Plan in accordance with the schedule therein. The value (as set forth in the Capital Expenditure and Maintenance Plan) of each such activity not

performed in accordance with such schedule by the Closing Date shall reduce the Purchase Price on a dollar-for-dollar basis; except to the extent that a Vice President of Buyer in consultation with Seller agrees in writing that such activity is not required to be performed. If Seller desires to incur any capital expenditure that materially improves the Acquired Assets and is not (x) described in the Capital Expenditure and Maintenance Plan or required to comply with any applicable Law or Permit or (y) a repair, replacement or cure required under Section 6.11, and Seller desires to increase the Purchase Price therefor, Seller shall notify Buyer of the cost of such capital expenditure, of its desire to increase the Purchase Price by such cost and of the expected material improvement to the Acquired Assets (such notice being, the "*Capital Improvement Notice*"). If Buyer expressly approves such capital expenditure (which may be conditioned upon terms and conditions acceptable to Buyer) and expressly agrees to increase the Purchase Price by such cost by notice to Seller referencing this Section 6.16(a), (i) Seller shall be entitled to perform the work necessary to execute, and incur the cost for, such capital expenditure, and (ii) if after completion of such work, the Acquired Assets are materially improved as described in the Capital Improvement Notice, the Purchase Price shall be increased by an amount equal to Seller's costs incurred to execute such capital expenditure, except that such amount shall not exceed the cost described in the Capital Improvement Notice, without Buyer's written consent. All Seller Contracts for such work shall become Assumed Contracts, except that the price payable under such Contracts shall remain the obligation of Seller. Notwithstanding any provision herein to the contrary, the Purchase Price shall not be increased due to Seller's incurrence of any capital or other expenditure, except as set forth in clause (ii) above.

(b) Prior to the Closing Date, Seller shall at all times maintain an inventory of Spare Parts; provided that Seller shall have the right to use Spare Parts in the ordinary course of the Business of the Vero Beach Electric Utility consistent with Seller's Past Practices but shall be required to purchase replacement Spare Parts upon such use taking into account the Vero Beach Power Plant Expectations.

Section 6.17 Customer Data Conversion.

The Parties shall cooperate with each other to facilitate an orderly and seamless transition from Seller to Buyer of the information systems, computer applications and processing of data for Buyer to commence conducting the Business of the Vero Beach Electric Utility as of the Closing Date in the manner and format acceptable to Buyer. At Buyer's option, (a) Buyer shall with the cooperation of Seller engage Cayenta to convert Seller's Customer data to a format useable by Buyer as reasonably determined by Buyer or (b) Seller shall with the cooperation of Buyer engage Cayenta to convert Seller's Customer data to a format useable by Buyer as reasonably determined by Buyer and outlined in Schedules 6.17(a) and (b), on terms, conditions and pricing approved by Buyer. If option (b), above, is exercised by Buyer, the Purchase Price shall be increased by the price approved by Buyer for such data conversion that is charged by Cayenta to Seller.

Section 6.18 Seller as Customer.

Seller shall be a retail electric service customer of Buyer commencing with the Closing Date. Except with respect to facilities or other structures covered by a Buyer tariff designed to handle un-metered service, Seller shall be responsible for providing, prior to the Closing Date,

all metering and other equipment necessary for Buyer to measure Seller's consumption of electricity at each facility or other structure of Seller (other than Acquired Assets) requiring electric service.

Section 6.19 Vero Beach Electric Utility Bonds and Other Indebtedness.

Simultaneous with the Closing, Seller shall deposit in trust under an escrow deposit agreement acceptable to Buyer with an independent trustee acceptable to Buyer either (i) monies in an amount that shall be sufficient, or (ii) non-callable Defeasance Obligations the principal of and the interest on which when due will provide monies which, together with other monies, if any, deposited in the escrow deposit agreement, shall be sufficient, in the case of (i) and (ii), to pay when due the principal or redemption price, if applicable, and interest due and to become due on the Vero Beach Electric Utility Bonds on or prior to the redemption date or maturity date thereof, as the case may be. The sufficiency of such deposit of monies and/or non-callable Defeasance Obligations shall be verified by an independent certified public accountant acceptable to Buyer and irrevocable instructions shall be provided under the escrow deposit agreement to the trustee thereunder to cause the publication and provision of any required redemption notice in accordance with the Bond Resolution, and there shall be delivered to the Parties opinions of bond counsel to Seller, in a form satisfactory to the Parties, to the effect that the Vero Beach Electric Utility Bonds have ceased to be entitled to any lien, benefit or security under the Bond Resolution, and all covenants, agreements and obligations of the Seller to the holders of such Vero Beach Electric Utility Bonds have thereupon ceased, terminated and become void and be discharged and satisfied, and the Bond Resolution is of no further force and effect. Simultaneously with the Closing, Seller shall redeem and pay in full the Vero Beach Revenue Note, and the holder of the Vero Beach Revenue Note shall acknowledge payment in full of the Vero Beach Revenue Note and satisfaction of Seller's obligations under the Loan Agreement dated June 10, 2008 related thereto, in a manner satisfactory to Seller and Buyer.

Section 6.20 [Reserved]

Section 6.21 Exclusivity.

Except as expressly permitted by this Agreement, Seller will not, directly or indirectly, or through an official, employee, representative or by or through the use of any other conduit (including any other Person), (a) offer to sell or transfer any of the Acquired Assets (or offer to enter into any transaction contemplated by this Agreement with) any Person, or (b) request, solicit or otherwise encourage inquiries, proposals or offers from, or participate in any discussions or negotiations with, any Person other than Buyer with respect to the sale or transfer of any of the Acquired Assets or any transaction contemplated by this Agreement.

Section 6.22 No Seller Changes in Law.

On or prior to the Closing Date, Seller agrees not to promulgate, enact, adopt, repeal, amend, modify or make effective any Law or resolution, or take or support any action, that would adversely affect any of the transactions contemplated by this Agreement or the Business of the Vero Beach Electric Utility.

Section 6.23 Vero Beach Power Plant; Certain Environmental Liabilities.

Seller shall be entitled at any time within ninety (90) days after Buyer provides notice to Seller of the date for commencement of Decommissioning (which notice shall be provided no less than nine (9) months prior to such date) to direct Buyer to dismantle all or a portion of the Vero Beach Power Plant and the Vero Beach Power Plant Substation in accordance with Exhibit H; provided that Buyer may be required by applicable law to dismantle more than the portions directed by Seller. If Seller does not direct Buyer to dismantle any portion of the Vero Beach Power Plant and the Vero Beach Power Plant Substation in accordance with the previous sentence, then title of the Vero Beach Power Plant and the Vero Beach Power Plant Substation shall pass to Seller upon termination or expiration of the Vero Beach Power Plant Site Lease Agreement and Buyer shall have no obligation to dismantle the Vero Beach Power Plant or the Vero Beach Power Plant Substation. If Seller directs Buyer to dismantle only a portion of the Vero Beach Power Plant or the Vero Beach Power Plant Substation in accordance with the previous sentence (the "**Dismantled Portion**"), then title to the portion of the Vero Beach Power Plant and the Vero Beach Power Plant Substation not dismantled by Buyer or its contractor (the "**Remaining Portion**"), shall pass to Seller upon completion of the dismantlement of the Dismantled Portion and Buyer shall have no obligation to dismantle the Remaining Portion. Seller shall be required to perform (or reimburse Buyer for the cost to perform if performed by Buyer or its contractor) all Remediation relating to the presence or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Vero Beach Power Plant Site at any time before or after the Closing Date irrespective of the cause of such presence or Release, excluding the costs of Remediation of known, above ground Releases caused by Buyer after the Closing Date but prior to commencement of dismantling of the Vero Beach Power Plant or the Vero Beach Power Plant Substation (such excluded costs being, the "**Buyer Remediation Responsibility**"). Buyer agrees that, notwithstanding Seller's obligation in the preceding sentence or under Section 8.1(b)(iii) to indemnify, defend and hold the Buyer Indemnitees harmless from, and pay, reimburse and fully compensate as the primary obligor Buyer Indemnitees for, Excluded Environmental Liabilities, Buyer shall bear the first \$500,000 of costs for Remediation of the Vero Beach Power Plant Site required by applicable Law in connection with Buyer's dismantling of the Vero Beach Power Plant and the Vero Beach Power Plant Substation (the "**Buyer Remediation Share**"); provided that if Seller does not direct Buyer to dismantle any portion of the Vero Beach Power Plant or the Vero Beach Power Plant Substation in accordance with this paragraph, then the Buyer Remediation Share shall be zero dollars. The Buyer Remediation Share and the Buyer Remediation Responsibility is intended to constitute the Parties' agreement as to Buyer's sole and exclusive Liability related to the presence or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Vero Beach Power Plant Site irrespective of the cause of such presence or Release, and Seller hereby releases Buyer from any Liability in excess of the Buyer Remediation Share and the Buyer Remediation Responsibility for Remediation related to the presence or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Vero Beach Power Plant Site irrespective of the cause of such presence or Release (including Releases by Buyer).

Section 6.24 Customer Consumption Allocation.

- (a) Seller shall use reasonable efforts to read the meters of all Customers of Seller within one (1) month (reading used for billing) prior to the Closing Date, and Buyer shall

use reasonable efforts to read the meters of all such Customers within one (1) month after the Closing Date. The reading obtained by Seller (within one month prior to the Closing Date) shall be included in the Customer data conversion file from Seller to Buyer. Within sixty (60) days after the date that Buyer reads the last of the meters of such Customers, Buyer shall provide to Seller the date of the first meter reading of each such Customer occurring on and after the Closing Date and a prorated final bill reading (using the allocation method described below) for the Pre-Closing Consumption Period (as defined below). Irrespective of the actual consumption of electricity by a Customer during (a) the period (the "*Pre-Closing Consumption Period*") from and including the date of the last meter reading of such Customer occurring prior to the Closing Date and (b) the period (the "*Post-Closing Consumption Period*" and together with the Pre-Closing Consumption Period, the "*Between Meter Readings Period*") from and including the date of the first meter reading of such Customer occurring on or after the Closing Date, the Parties agree to allocate to the Pre-Closing Consumption Period and the Post-Closing Consumption Period a percentage of the actual consumption of electricity by each Customer during the Between Meter Readings Period pursuant to the following formulas (for the avoidance of doubt, the sum of the percentages allocated to the Pre-Closing Consumption Period and the Post-Closing Consumption Period of a particular Customer must equal 100%):

(i) Allocation to the Pre-Closing Consumption Period shall be:

(A) (i) the total consumption of electricity by each Customer during the Between Meter Readings Period *divided by* (ii) the total number of days in the Between Meter Readings Period *multiplied by* (B) the total number of days in the Pre-Closing Consumption Period; and

(ii) Allocation to the Post-Closing Consumption Period shall be:

(A) (i) the total consumption of electricity by each Customer during the Between Meter Readings Period *divided by* (ii) the total number of days in the Between Meter Readings Period *multiplied by* (B) the total number of days in the Post-Closing Consumption Period

(b) The Parties agree that Seller (and not Buyer) shall bill, and be entitled to collect payment from Customers, for electric service provided to Customers prior to the Closing Date and that Buyer (and not Seller) shall bill, and be entitled to collect payment from Customers, for electric service provided to Customers on and after the Closing Date; provided that, in determining the amount of electricity consumed by a particular Customer that was provided by Seller or by Buyer during the Between Meter Readings Period for such Customer, the Parties agree that, irrespective of the actual amount of electricity provided by Seller or by Buyer during the Between Meter Readings Period, the amount of electricity provided by Seller shall be the amount of electricity deemed to be consumed by such Customer during the Pre-Closing Consumption Period as determined by this Section, and the amount of electricity provided by Buyer shall be the amount of electricity deemed to be consumed by such Customer during the Post-Closing Consumption Period as determined by this Section.

(c) Notwithstanding Section 6.24(a) and (b), if the FPSC requires Buyer to determine consumption of electricity by Customers during Post-Closing Consumption Period in manner different than in accordance with Section 6.24(a) and (b), then the allocation between Buyer and Seller of consumption of electricity by Customers during the Between Meter Readings Period shall be in accordance with the manner required by the FPSC for Buyer to

determine the consumption of electricity by Customers during the Post-Closing Consumption Period.

Section 6.25 Seller's Responsibility for Environmental Liabilities.

At all times after the Closing Date and except to the extent of the Buyer Remediation Share, Seller agrees to be responsible for any and all Losses of Buyer, and pay and perform when due any and all Liabilities of Buyer, (a) under or related to Environmental Laws, Environmental Permits or Environmental Claims with respect to the Business of the Vero Beach Electric Utility and/or the Acquired Assets relating to or arising from any event, condition, circumstance, act or omission occurring prior to the Closing Date, or (b) relating to or arising from the presence or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Acquired Assets or the Real Property prior to the Closing Date.

**ARTICLE VII
CONDITIONS PRECEDENT**

Section 7.1 Conditions Precedent to Obligations of Buyer.

The obligations of Buyer to purchase the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following conditions precedent (except to the extent waived (in whole or in part) in writing by Buyer in its sole discretion):

(a) The representations and warranties (other than the Seller Fundamental Representations) of Seller set forth in this Agreement (without regard to any materiality or Material Adverse Effect qualification therein) shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date), except for such failures to be true and correct which would not reasonably be expected to constitute, individually or in the aggregate with the financial or economic adverse effect on Buyer of breaches of covenants and agreements of Seller in Article VI, a Material Adverse Effect.

(b) The Seller Fundamental Representations shall be true and accurate in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date).

(c) Seller shall have satisfied all of its obligation under Section 6.13 and:

(i) each condition precedent to the termination of the OUC-Vero Beach PPA set forth in the OUC Termination Agreement has been satisfied (or waived thereunder);

(ii) each condition precedent to the transfer and assignment to OUC of Seller's power entitlement shares in the Stanton I,

Stanton II and St. Lucie II projects, and assumption by OUC of Seller's post-transfer obligations under the FMPA Agreements (other than the All-Requirements Contract), set forth in the OUC Assignment Agreements and the OUC Transfer Agreements has been satisfied (or waived thereunder);

(iii) has obtained the written consent of FMPA and all other Persons required under the FMPA Agreements (other than the All-Requirements Contract), for the transfer of the applicable Acquired Assets to Buyer in form and substance reasonably satisfactory to Buyer; and

(iv) has terminated Seller's participation in, and the applicability to Seller of, the All-Requirements Contract.

(d) No preliminary or permanent injunction or other Order by any Governmental Authority (other than Seller) which restrains or prevents the consummation of the transactions contemplated hereby shall have been issued and remain in effect (each Party agreeing to cooperate in all efforts to have any such injunction or Order lifted) and no Law shall have been enacted by any Governmental Authority which prohibits the consummation of the transactions contemplated hereby;

(e) Buyer shall have received all of Buyer's Required Regulatory Approvals, in form and substance reasonably satisfactory to Buyer and such approvals shall be in full force and effect and either (i) shall be final and non-appealable or (ii) if not final and non-appealable, shall not be subject to the possibility of appeal, review or reconsideration which, in the reasonable opinion of Buyer, is likely to be successful;

(f) Seller shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing Date or during the Interim Period;

(g) Buyer shall have received a certificate from the City Manager of Seller, dated the Closing Date, to the effect that, to such person's knowledge, the conditions set forth in this Sections 7.1 (a), (b) and (f) have been satisfied by Seller;

(h) Seller shall have delivered, or caused to be delivered, to Buyer at the Closing, Seller's closing deliveries described in Section 3.7;

(i) Since the Effective Date, no Material Adverse Effect shall have occurred and be continuing; provided, that for purposes of determining whether a Material Adverse Effect has occurred for purposes of this Section 7.1(i), any such violations or breaches by Seller of any representation or warranty contained in Section 4.7 shall be measured without regard to any Knowledge qualifiers in such representations and warranties of Seller (other than with respect to Seller's Knowledge as to the obligations of third parties that may be counterparties to any Real Property Interest Instrument);

(j) Seller shall have delivered to Buyer reasonably satisfactory evidence of (i) the satisfaction, discharge and payment in full of the Vero Beach Electric Utility Bonds and the

Vero Beach Revenue Note in accordance with Section 6.19; and (ii) release of all Encumbrances on the Acquired Assets (other than Permitted Encumbrances);

(k) Buyer has received approval from the FPSC to charge Seller's Customers the same rates for retail electric service as Buyer charges its other electric utility customers;

(l) Buyer shall have secured, at Buyer's cost and expense, (i) title insurance policies, insurable at regular rates, in an amount satisfactory to Buyer, from a title insurance company authorized to do business in the State of Florida, insuring that Buyer has good, marketable and insurable title to the Acquired Land in Fee and the right to control, occupy and use the Acquired Land in Fee, free and clear of Encumbrances other than Permitted Encumbrances, (ii) title insurance policies, insurable at regular rates, in an amount satisfactory to Buyer, from a title insurance company authorized to do business in the State of Florida, insuring that Buyer has good, marketable and insurable leasehold interests in the Vero Beach Power Plant Site, the substation 5 and substation 6 real property and (if Buyer exercises the Airport Warehouse Lease Agreement Option) the Airport Warehouse (T&D) Building, and the right to control, occupy and use such property, free and clear of Encumbrances other than Permitted Encumbrances, and (iii) American Land Title Association (ALTA) surveys issued to Buyer and the title company secured by Buyer prepared by certified surveyors showing the Acquired Land In Fee, the substation 5 real property and the substation 6 real property and (if Buyer exercises the Airport Warehouse Lease Agreement Option) the Airport Warehouse (T&D) Building property with all physical encumbrances observed and all matters of record that affect the Acquired Land In Fee, the substation 5 real property and the substation 6 real property, and the Airport Warehouse (T&D) Building property, the form and substance of which are satisfactory to Buyer; and

(m) Buyer shall have received such other documents, and certificates as Buyer, or its counsel, shall reasonably request for conveying title to Acquired Assets by written notice to Seller given not less than ten (10) days prior to the Closing Date.

Section 7.2 Conditions Precedent to Obligations of Seller.

The obligation of Seller to sell the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following conditions precedent (except to the extent waived (in whole or in part) in writing by Seller in its sole discretion):

(a) The representations and warranties (other than the Buyer Fundamental Representations) of Buyer set forth in this Agreement (without regard to any materiality or Material Adverse Effect qualification therein) shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date), except for such failures to be true and correct which would not reasonably be expected to constitute, individually or in the aggregate, a Material Adverse Effect.

(b) The Buyer Fundamental Representations shall be true and accurate in all respects on and as of the Effective Date and on and as of the Closing Date as though made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date).

(c) No preliminary or permanent injunction or other Order by Governmental Authority (other than Seller) which restrains or prevents the consummation of the transactions contemplated hereby shall have been issued and remain in effect (each Party agreeing to use its Commercially Reasonable Efforts to have any such injunction or Order lifted) and no Law shall have been enacted by any state or federal government or Governmental Authority (other than Seller) which prohibits the transactions contemplated hereby;

(d) Buyer shall have performed and complied with in all material respects the covenants and agreements contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date or during the Interim Period;

(e) Buyer has received approval from the FPSC to charge Seller's Customers the same rates for retail electric service as Buyer charges its other electric utility customers;

(f) Seller shall have received a certificate from an authorized officer of Buyer, dated the Closing Date, to the effect that, to such person's knowledge, the conditions set forth in this Sections 7.2 (a), (b) and (d) have been satisfied by Buyer;

(g) The following has occurred, except to the extent any of the following are within Seller's control (it being understood by Seller that performance of such matters within Seller's control shall not constitute conditions precedent under this Section 7.2 to the obligation of Seller to sell the Acquired Assets and to consummate the other transactions contemplated by this Agreement):

(i) Each condition precedent to the termination of the OUC-Vero Beach PPA set forth in the OUC Termination Agreement has been satisfied (or waived thereunder);

(ii) Each condition precedent to the transfer and assignment to OUC of Seller's power entitlement shares in the Stanton I, Stanton II and St. Lucie II projects, and assumption by OUC of Seller's post-transfer obligations under the FMPA Agreements (other than the All-Requirements Contract), set forth in the OUC Assignment Agreements and the OUC Transfer Agreements has been satisfied (or waived thereunder); and

(iii) The written consent of FMPA and all other Persons required under the FMPA Agreements (other than the All-Requirements Contract) for the transfer of the applicable Acquired Assets to Buyer has been obtained in form and substance reasonably satisfactory to Seller.

(h) Buyer shall have delivered, or caused to be delivered, to Seller at the Closing, Buyer's closing deliveries described in Section 3.7.

ARTICLE VIII INDEMNIFICATION AND PAYMENT FOR LOSSES

Section 8.1 Indemnification and Payment for Losses.

(a) From and after the Closing, Buyer shall, on an After-Tax Basis, indemnify, defend and hold harmless Seller and its Counsel and employees (each, a "**Seller Indemnitee**") from and against, and pay, reimburse and fully compensate as the primary obligor each Seller Indemnitee for, any and all Losses (each, a "**Covered Loss**"), asserted against or suffered by any Seller Indemnitee relating to, resulting from or arising out of:

- (i) any breach or inaccuracy of any Buyer Fundamental Representation as of the date hereof or as of the Closing Date as though such representations or warranties were made on the Closing Date (any such breach being determined and any resulting Loss measured without regard to any "materiality," "material adverse effect" or similar qualifiers in the representations and warranties of Buyer), except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date;
- (ii) any breach of any covenant (including any covenant to indemnify, defend or hold a Person harmless from, or to pay, reimburse or fully compensate as the primary obligor a Person for Losses) or agreement of Buyer contained in this Agreement;
- (iii) any Assumed Liability (other than any Excluded Liability);
- (iv) any Assumed Contract (other than any Loss relating to, resulting from or arising out of any Excluded Liability); or
- (v) any Third Party Claim against a Seller Indemnitee arising out of or in connection with (A) Buyer's ownership, use or operation of the Acquired Assets or (B) Buyer's performance of the Business of the Vero Beach Electric Utility, in each case under clause (A) or (B), following the Closing Date (other than any Loss relating to, resulting from or arising out of any Excluded Asset or Excluded Liability).

(b) From and after the Closing, Seller shall, on an After-Tax Basis, indemnify, defend and hold harmless Buyer and its Affiliates and its and their officers, directors, members, employees, shareholders and agents (each, a "**Buyer Indemnitee**") from and against, and pay, reimburse and fully compensate as the primary obligor each Buyer Indemnitee for, any and all Covered Losses asserted against or suffered by any Buyer Indemnitee relating to, resulting from or arising out of:

- (i) any breach or inaccuracy of any Seller Fundamental Representation or any representation or warranty of Seller contained in Section 4.10 or 4.18 as of the date hereof or as of the Closing Date as though such representations or warranties were made on the Closing Date (any such breach being determined and any resulting Loss measured without regard to any "materiality," "material adverse effect" or similar qualifiers in the representations and warranties of Seller, other than (A) such references in the defined term "Material Seller Contract", and (B) with respect to the representations and warranties contained in Section 4.6),

except those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date;

(ii) any breach of any covenant (including any covenant to indemnify, defend or hold a Person harmless from, or to pay, reimburse or fully compensate as the primary obligor a Person for Losses) or agreement of Seller contained in this Agreement;

(iii) any Excluded Liability, except to the extent of the Buyer Remediation Share;

(iv) any Excluded Asset;

(v) any Third Party Claim against a Buyer Indemnitee arising out of or in connection with (A) Seller's ownership, use or operation of the Acquired Assets, or (B) the Business of the Vero Beach Electric Utility, in each case under clause (A) or (B), on or prior to the Closing Date (other than any Loss relating to, resulting from or arising out of any Assumed Liability);

(vi) the presence or Release of Hazardous Substances at, on, in, under, adjacent to or migrating from the Vero Beach Power Plant Site prior to or after the Closing Date irrespective of the cause of such presence or Release (including Releases by Buyer), except to the extent of the Buyer Remediation Share and the Buyer Remediation Responsibility; or

(vii) any demand, claim or Action relating to public assistance funds awarded to Seller relating to any hurricane or other named storm.

(c) Notwithstanding anything in this Agreement to the contrary:

(i) the representations and warranties contained in this Agreement shall not survive the Closing Date, except that (A) the Seller Fundamental Representations and the Buyer Fundamental Representations shall survive the Closing indefinitely, and (B) the representations and warranties set forth in Sections 4.10 and 4.18 shall survive until sixty (60) days following the expiration of the applicable statute of limitations with respect to the matters covered thereby; and

(ii) the covenants and obligations of the Parties set forth in this Agreement shall survive the Closing until sixty (60) days following the expiration of the applicable statute of limitations applicable to contracts, and each Party shall be entitled to the full performance thereof by the other Party within such time period, except that each Party's rights and obligations under this Article VIII, Section 6.4, Section 6.23, Section 6.25 and Section 9.1(i) shall survive the Closing indefinitely; and

(iii) (A) the end of the survival period for a representation, warranty, covenant or obligation as provided in subparagraphs (i) or (ii) of this Section 8.1(c) and the agreement of the Parties that a Party shall have no rights or remedies against the other Party (other than a potential right to terminate under Section 9.1(d) or (e)) for an alleged breach of representations and warranties which do not survive the Closing shall only affect an Indemnitee's ability to make a claim for a Covered Loss under Section 8.1(a) or Section 8.1(b)

that is based upon one or more of the representations, warranties, covenants or obligations that no longer survive, and (B) no provision of this Section 8.1 (including, without limitation, Section 8.1(d) and Section 8.1(e)) shall be interpreted or applied in a manner that limits or adversely affects an Indemnitee's ability to make a claim for a Covered Loss under any provision of Section 8.1(a) or Section 8.1(b) with respect to any event or circumstance that can be made independent of, and without reliance upon, a claim of breach of any representation, warranty, covenant or obligation by a Party that has expired pursuant to subparagraphs (i) or (ii) of this Section 8.1(c) even if such event or circumstance might have also formed the basis for a claim in reliance upon such expired representation, warranty, covenant or obligation had such representation, warranty, covenant or obligation continued to survive.

(d) The expiration or termination of any representation, warranty, covenant or agreement shall not affect the Parties' obligations under this Section 8.1 if the Indemnitee provided the Person required to provide indemnification, or payment, reimbursement or full compensation as the primary obligor, for Losses under this Agreement (the "*Indemnifying Party*") with proper notice of the claim or event for which indemnification or payment, reimbursement or full compensation as the primary obligor for Losses is sought prior to such expiration, termination or extinguishment; except the foregoing shall not apply to any claim for an alleged breach of any of Seller's representations or warranties which do not survive the Closing, as provided in Section 8.1(c)(i).

(e) The rights and remedies of Seller and Buyer under this Article VIII are not exclusive, but shall be in addition to any and all other rights and remedies which Seller or Buyer may have under this Agreement or at law or in equity with respect to any breach of or failure to perform any covenant, agreement, representation or warranty of the other Party set forth in this Agreement; provided, however, Buyer shall have no rights or remedies against Seller (other than a potential right to terminate under Section 9.1(d)) for an alleged breach of any of Seller's representations and warranties which do not survive the Closing, as provided in Section 8.1(c)(i). Notwithstanding any provision in this Agreement to the contrary, each Party shall have the express right to collect amounts payable under this Agreement pursuant to legal action.

Section 8.2 Defense of Claims.

(a) If any Indemnitee receives notice of the assertion of any claim or of the commencement of any claim, action, or proceeding made or brought by any Person who is not a Party to this Agreement or any Affiliate of a Party to this Agreement (a "*Third Party Claim*"), including but not limited to an information document request or a notice of proposed disallowance issued by the IRS relating to a matter covered by Section 6.8, with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall not be given later than twenty (20) calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Covered Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel, provided that the counsel for the Indemnifying Party who shall conduct the defense of

such Third Party Claim shall be reasonably satisfactory to the Indemnitee. The Indemnitee shall cooperate in good faith in such defense at such Indemnitee's own expense. If an Indemnifying Party elects not to assume the defense of any Third Party Claim, the Indemnitee may compromise or settle such Third Party Claim over the objection of the Indemnifying Party, which settlement or compromise shall conclusively establish the Indemnifying Party's Liability pursuant to this Agreement; provided, however, that the Indemnitee provides written notice to the Indemnifying Party of its intent to settle and such notice reasonably describes the terms of such settlement at least ten (10) Business Days prior to entering into any settlement.

(b) (i) If, within twenty (20) calendar days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claims, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 8.2(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnifying Party shall fail to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defense and the Indemnifying Party shall be liable for all reasonable expenses thereof.

(ii) Without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to Liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification, or payment, reimbursement or full compensation as the primary obligor, for Losses hereunder. If a firm offer is made to settle a Third Party Claim that would lead to a Liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification, or payment, reimbursement or full compensation as the primary obligor, for Losses hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within twenty (20) calendar days after its receipt of such notice, the Indemnifying Party shall be relieved of its obligations to defend such Third Party Claim and the Indemnitee may contest or defend such Third Party Claim. In such event, the maximum Liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer plus reasonable costs and expenses paid or incurred by Indemnitee up to the date of said notice.

(c) Any claim by an Indemnitee on account of a Covered Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event such notice shall not be given later than twenty (20) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of twenty (20) calendar days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such twenty (20) calendar day period, the Indemnifying Party shall be deemed to have accepted such claim. If the Indemnifying Party rejects such claim, the Indemnitee will be free to seek enforcement of

its right to indemnification, or payment, reimbursement or full compensation as the primary obligor, for Losses under this Agreement.

(d) The amount of any Covered Loss shall be reduced to the extent that the Indemnitee receives any insurance proceeds with respect to a Covered Loss. If the amount of any Covered Loss, at any time subsequent to the making of a payment in full in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by, from or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof to the date of repayment at the Prime Rate, but in no event more than the maximum rate permitted by applicable Law) shall promptly be repaid by the Indemnitee to the Indemnifying Party.

(e) A failure to give timely notice as provided in this Section 8.2 shall not affect the rights or obligations of any Party hereunder except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

(f) Payment, reimbursement or full compensation of a Covered Loss shall be made by the relevant Party within thirty (30) days after demand therefor; provided, that this Section 8.2(f) shall not be construed to limit or impair such Party's ability to dispute its responsibility for payment, reimbursement or full compensation of a Covered Loss as otherwise permitted by this Agreement.

Section 8.3 Offset.

Buyer shall have the right to offset, on a dollar for dollar basis, any portion of any payment to be made under Article III or under the Franchise Ordinance against any amount payable by Seller under any provision of this Agreement (including, without limitation, this Article VIII) that has not been paid when due to Buyer or any of the other Buyer Indemnitees or by Seller to Buyer under any of the Ancillary Agreements. If any Buyer Indemnitee incurs or suffers a Loss for which such Buyer Indemnitee is entitled to indemnification, or payment, reimbursement or full compensation as the primary obligor, by Seller for Losses pursuant to Section 8.1(b) or if Seller becomes obligated pursuant to any other provision of this Agreement or any of the Ancillary Agreements to indemnify, pay, reimburse or fully compensate Buyer for any other amount under this Agreement or under any of the Ancillary Agreements, then Buyer shall be entitled to offset an amount equal to such Loss and/or such other amount against any one or more payments due to be made to Seller under the Franchise Ordinance and such payments under the Franchise Ordinance shall be reduced by the amount so offset by Buyer; provided, that Buyer shall not be entitled to offset against any payment due within twelve (12) months after notice by Buyer to Seller of Buyer's exercise of its right to offset under this paragraph. Buyer shall charge Seller interest from the date of incurrence or suffering of such Loss or the date any such other amount becomes due from Seller to Buyer until the actual date of offset against payment under the Franchise Ordinance at the following rates: (i) during the first twelve (12) months after notice by Buyer to Seller of Buyer's exercise of its right to offset under this paragraph, the interest rate shall be the Prime Rate from time to time in effect, and (ii) after the end of such twelve (12) month period, the interest rate shall be at the Default Rate, but in no

event more than the maximum rate permitted by applicable Law. Such interest may be offset by Buyer against such payment under the Franchise Ordinance or later payments thereunder. To the extent Buyer offsets any amount alleged to be due from Seller under Article VIII or otherwise, and it is determined Buyer offset more than what should have been offset, then Buyer shall reimburse Seller promptly upon such determination and Buyer shall pay Seller interest from the date of such excess offset on the amount to be reimbursed to Seller until the actual date of reimbursement at the following rates: (i) during the first twelve (12) months after Buyer exercise of its right to offset with respect to such excess amount, the interest rate shall be the Prime Rate from time to time in effect, and (ii) after the end of such twelve (12) month period, the interest rate shall be the Default Rate, but in no event more than the maximum rate permitted by applicable Law. For the avoidance of doubt, accrual or payment of interest on an obligation of a Party that has become due and payable, including interest at the Default Rate, shall not mean that the other Party is not entitled to pursue any other remedy available to such Party at law or in equity to enforce the obligations of the defaulting Party under this Agreement.

ARTICLE IX TERMINATION

Section 9.1 Termination.

(a) This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of Seller and Buyer.

(b) This Agreement may be terminated by Seller or Buyer, if (i) any federal or state court of competent jurisdiction shall have issued an Order permanently restraining, enjoining or otherwise prohibiting the Closing, and such Order, shall have become final and nonappealable; (ii) any Law shall have been enacted or issued by any Governmental Authority (other than Seller) which, directly or indirectly, prohibits the consummation of the Closing; or (iii) each condition precedent in Section 7.1 has been satisfied (or waived by Buyer), each condition precedent in Section 7.2 has been satisfied (or waived by Seller) and the Closing contemplated hereby shall have not occurred on or before the Termination Date; provided, that the right to terminate this Agreement under this Section 9.1(b)(iii) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.

(c) This Agreement may be terminated by Buyer if any of Buyer's Required Regulatory Approvals shall have been denied or shall have been granted but are not in form and substance reasonably satisfactory to Buyer.

(d) This Agreement may be terminated by Buyer if there has been one or more violations or breaches by Seller of any representation or warranty contained in this Agreement and such violation(s) or breach(es) (individually or in the aggregate) constitutes a Material Adverse Effect and is not cured by the earlier of the Closing Date or ninety (90) days after receipt by Seller (or by Buyer in the case of notice by Seller pursuant to Section 6.9) of written notice specifying particularly such violation(s) or breach(es) and the amount of any alleged Covered Losses. For purposes of determining whether a Material Adverse Effect has occurred for purposes of this Section 9.1(d), any such violations or breaches by Seller of any

representation or warranty contained in Section 4.7 shall be measured without regard to any Knowledge qualifiers in such representations and warranties of Seller. Notwithstanding the foregoing, if Buyer gives Seller such notice of a violation or breach by Seller of any such representation or warranty within ninety (90) days before the Termination Date, Seller may elect by written notice to Buyer prior to the Closing Date to extend the Termination Date by up to ninety (90) days if Seller deems such additional time necessary for it to cure such violations or breaches of its representations and warranties.

(e) This Agreement may be terminated by Seller if there has been one or more violations or breaches by Buyer of any representation or warranty contained in this Agreement and such violation(s) or breach(es) (individually or in the aggregate) constitutes a Material Adverse Effect and is not cured by the earlier of the Closing Date or ninety (90) days after receipt by Buyer of written notice specifying particularly such violation(s) or breach(es) and the amount of any alleged Covered Losses. Notwithstanding the foregoing, if Seller gives Buyer such notice of a violation or breach by Buyer of any such representation or warranty within ninety (90) days before the Termination Date, Buyer may elect by written notice to Seller prior to the Closing Date to extend the Termination Date by up to ninety (90) days if Buyer deems such additional time necessary for it to cure such violations or breaches of its representations and warranties.

(f) This Agreement may be terminated by a Party if there has been one or more material breaches by the other Party of any covenant or agreement contained in this Agreement and such breach(es) is not cured by ninety (90) days after receipt by the breaching Party of written notice specifying particularly such breach(es). Notwithstanding the foregoing, if a Party gives the other Party such notice of breach(es) within ninety (90) days before the Termination Date, the other Party may elect by written notice to such Party prior to the Closing Date to extend the Termination Date by up to ninety (90) days if the other Party deems such additional time necessary for it to cure such breach(es).

(g) This Agreement may be terminated by either Party if on or prior to ninety (90) days following the Effective Date a referendum election has been duly called and held by the City of Vero Beach on the Referendum Question and the Referendum Question was not approved by a majority of the votes cast in such referendum election; provided, that notice of termination of this Agreement under this Section 9.1(g) must be given by the terminating Party to the other Party not later than sixty (60) days following the date on which such referendum election was held.

(h) This Agreement may be terminated by Buyer if, by February 28, 2013, the board of directors of NextEra Energy, Inc. fails to approve Buyer's execution of this Agreement, which approval may be withheld in such board's sole discretion; provided, that notice of termination of this Agreement under this Section 9.1(h) must be given by Buyer to Seller not later than March 4, 2013.

(i) If, following the occurrence of any fire or other casualty that results in all or any portion of the Acquired Assets being damaged or destroyed, Seller reasonably estimates that the Cure Amount would exceed the sum of the Maximum Uncovered Loss Amount plus the Available Proceeds, then Seller may, within one (1) month following the date that such fire or

other casualty ended, give notice to Buyer of its intent to terminate this Agreement, which notice shall set forth a detailed breakdown of Seller's reasonable estimate of the Cure Amount and Available Proceeds. Within sixty (60) days after Buyer's receipt of such notice (or such longer period as the Parties may mutually agree), the Parties shall reasonably agree upon the Cure Amount (the "*Final Cure Amount*"). At any time prior to sixty (60) days after agreement on the Final Cure Amount, Buyer shall (which Buyer may do prior to agreement on the Final Cure Amount) (a) accept Seller's notice of intent to terminate and the Agreement shall terminate, (b) elect (the "*Immediate Closing Election*") to proceed to Closing as soon as practicable, and Seller and Buyer shall cause Closing to occur as soon as practicable (subject to satisfaction (or waiver at the sole discretion of the Party for whose benefit such conditions precedent exist) of all conditions precedent under Sections 7.1 and 7.2) or (c) elect (the "*Delayed Closing Election*") to proceed to Closing no earlier than the end of the Recovery Period and the Termination Date shall not be earlier than sixty (60) days after the end of the Recovery Period, except that at any time prior to the end of the Recovery Period, Buyer may elect (the "*Partial Recovery Closing Election*") to proceed to Closing as soon as practicable with a Closing Date no earlier than eighteen (18) months after the date of notice of the Delayed Closing Election, and Seller and Buyer shall cause Closing to occur as soon as practicable (subject to satisfaction (or waiver at the sole discretion of the Party for whose benefit such conditions precedent exist) of all conditions precedent under Sections 7.1 and 7.2). For the avoidance of doubt, neither Party is required to waive any condition precedent to Closing in order for Closing to occur pursuant to a Closing Election. If Buyer makes an Immediate Closing Election, the Purchase Price shall be increased by the Excess Uncovered Loss Amount. If Buyer makes a Partial Recovery Closing Election, the Purchase Price shall be increased by the product of (A) the Monthly Recovery Amount multiplied by (B) the number of months from the Closing Date to the end of the Recovery Period. If Buyer makes an Immediate Closing Election but Closing does not occur within eighteen (18) months after the date of notice of the Immediate Closing Election, then Buyer's election shall no longer be an Immediate Closing Election but shall be deemed to have been a Partial Recovery Closing Election. If Buyer makes a Closing Election and Closing occurs, Seller shall continue to make available to Buyer to effect such cure as determined by Buyer in its sole discretion the unexpended amount of all Available Proceeds; provided, however, if a Governmental Authority determines Buyer is not eligible to use any portion of the Available Proceeds provided by any Governmental Authority, such as the Federal Emergency Management Agency, then Seller will use such Available Proceeds and apply them to the repair of such damage or destruction as determined by Buyer in its sole discretion in compliance with the mandatory conditions of such Governmental Authority applicable to the use of such portion of the Available Proceeds. Schedule 9.1(i) attached hereto sets forth examples of the application of the provisions of this Section 9.1(i) and Section 6.11(c) to a hypothetical casualty event for illustrative purposes only.

(j) For the avoidance of doubt, if this Agreement is terminated by either Party under Section 9.1(g), by the Buyer under Section 9.1(h) or by Seller under Section 9.1(i), no termination fee will be payable under Sections 9.2(b) or Section 9.2(c).

Section 9.2 Effect of Termination.

(a) In the event of termination of this Agreement by Seller or Buyer pursuant to Section 9.1, written notice thereof shall promptly be given by the terminating Party to the

other Party, and this Agreement shall thereupon terminate. Notwithstanding the foregoing, and subject to Sections 9.2(b) and (c), if this Agreement terminates pursuant to Section 9.1 (other than a termination under Section 9.1(d), (e) or (f) due to an intentional or willful violation or breach of any covenant, agreement, representation or warranty), this Agreement shall be null and void and neither Party shall have any liability or obligation to the other Party under this Agreement or as a result of the termination hereof. If this Agreement is terminated as provided herein, all filings, applications and other submissions made to any Governmental Authority shall, to the extent practicable, be withdrawn from the Governmental Authority to which they were made.

(b) Notwithstanding any provision herein to the contrary, if this Agreement is terminated by Buyer pursuant to Section 9.1(d) or (f), then, in any such case, Seller shall pay Buyer, by wire transfer of immediately available funds within three (3) Business Days following demand therefor \$5,000,000. Other than in the case of a termination by Buyer under Section 9.1(d) or (f) due to an intentional or willful violation or breach by Seller of any covenant, agreement, representation or warranty, this Section 9.2(b) shall be Buyer's sole and exclusive remedy as a result of a termination of this Agreement by Buyer pursuant to Section 9.1(d) or (f); provided, that nothing in this Section 9.1(b) shall limit Buyer's rights under Section 10.12.

(c) Notwithstanding any provision herein to the contrary, if this Agreement is terminated by Seller pursuant to Section 9.1(e) or (f), then, in any such case, Buyer shall pay Seller, by wire transfer of immediately available funds within three (3) Business Days following demand therefor \$5,000,000. Other than in the case of a termination by Seller under Section 9.1(e) or (f) due to an intentional or willful violation or breach by Buyer of any covenant, agreement, representation or warranty, this Section 9.2(b) shall be Seller's sole and exclusive remedy as a result of a termination of this Agreement by Seller pursuant to Section 9.1(e) or (f); provided, that nothing in this Section 9.1(b) shall limit Seller's rights under Section 10.12.

(d) Seller and Buyer hereby acknowledge and agree that the fixed amounts payable pursuant to Sections 9.2(b) and (c) are reasonable liquidated damages considering the actual costs and losses that the non-breaching Party will sustain in the event of a termination of this Agreement under Section 9.1(d), (e) or (f), as applicable. Such amounts are agreed by the Parties and fixed hereunder by the Parties as liquidated damages because of the difficulty of ascertaining the exact amount of such actual costs and losses that will actually be sustained by the non-breaching Party in the event of such a termination, and the Parties hereby agree that the amounts specified Sections 9.2(b) and (c), respectively, are a reasonable estimate of the non-breaching Party's probable costs and losses (and not a penalty) and that they shall be applicable regardless of the amount of the costs and losses that the non-breaching Party actually sustains.

ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.1 Amendment and Modification.

This Agreement may not be amended, modified or supplemented, except by written agreement of Seller and Buyer.

Section 10.2 Waiver of Compliance; Consents.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not invalidate this Agreement, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. Except as otherwise provided herein, the failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a Party of the performance of any covenant, condition, representation or warranty of the other Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by a Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

Section 10.3 Third Party Beneficiaries.

(a) Except for the provisions of Article VIII which are intended to be for the benefit of the Persons identified therein, the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person, including without limitation any employee or any beneficiaries or dependents thereof. No provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of Seller (including any beneficiary or dependent thereof) in respect of continued employment or resumed employment, and no provision of this Agreement shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement except as expressly provided for thereunder.

Section 10.4 Notices.

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the recipient Party at its address (or at such other address for a Party as shall be specified by like notice; provided, however, that notices of a change of address shall be effective only upon receipt thereof):

(a) If to Seller, to:

City of Vero Beach
1053 20th Place
Vero Beach, FL 32961-1389
Attention: City Manager

with copies to:

City of Vero Beach
1053 20th Place
Vero Beach, FL 32961-1389
Attention: City Attorney

and

Edwards Wildman Palmer LLP
525 Okeechobee Boulevard
Suite 1600
West Palm Beach, FL 33401
Attention: John G. Igoe, P.A.

(b) if to Buyer, to:

Florida Power & Light Company
700 Universe Boulevard EMT/JB
Juno Beach, FL 33408
Attention: EMT Contracts Department

with a copy to:

Florida Power & Light Company
700 Universe Boulevard JB/Law
Juno Beach, FL 33408
Attention: General Counsel

Section 10.5 Assignment.

Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party, except that, from and after the Closing, Buyer may (without the consent of any other Party) assign this Agreement or all or any portion of Buyer's rights, interests or obligations hereunder to any Affiliate of Buyer or any Person providing financing to Buyer or any of its their Affiliates, but no such assignment shall release Buyer of its obligations under this Agreement. Subject to this Section 10.5, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 10.6 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies. THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE COURT OF THE STATE OF FLORIDA IN LEON COUNTY, FLORIDA, WHICH

COURT SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURT. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT, AND SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT.

Section 10.7 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 10.8 Schedules and Exhibits.

Except as otherwise provided in this Agreement, all Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

Section 10.9 Entire Agreement.

Except for the MOU, the Seller Executed Ancillary Agreements, this Agreement and the Ancillary Agreements, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement and shall supersede all previous oral and written and all contemporaneous oral negotiations, commitments and understandings including, without limitation, (a) that certain Letter of Intent dated May 6, 2011, between Seller and Buyer, as amended, and (b) all documents or communications, whether oral, written or electronic, submitted or made by (i) Buyer or any of its representatives to Seller or any of its representatives or (ii) Seller or any of its representatives to Buyer or any of its representatives, in connection with the sale process that occurred prior to the execution of this Agreement or otherwise in connection with the negotiation and execution of this Agreement.

Section 10.10 No Joint Venture.

Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship among the Parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the Parties.

Section 10.11 Change in Law.

If and to the extent that any Laws (other than Laws of Seller) that govern any aspect of this Agreement shall change, so as to make any aspect of this transaction unlawful, then the Parties agree to make such modifications to this Agreement as may be reasonably necessary for

this Agreement to accommodate any such legal or regulatory changes, without materially changing the overall benefits or consideration expected hereunder by any Party.

Section 10.12 Specific Performance.

Each Party acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each Party agrees that the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in addition to any other remedy to which it may be entitled, at law or in equity. For the avoidance of doubt, if a Party seeks and is granted specific performance of the obligations of a breaching Party under this Agreement and the Closing occurs in the manner contemplated by this Agreement, then neither Party shall be obligated to make the respective payments contemplated by Sections 9.2(b) or 9.2(c).

Section 10.13 Severability.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

FLORIDA POWER & LIGHT COMPANY

By: _____

Name: _____

Title: _____

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock
City Clerk

Craig Fletcher
Mayor

(City Seal)

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

Wayne R. Coment
City Attorney

James R. O'Connor
City Manager

Approved as to technical requirements:

Approved as to technical requirements:

